



A Guide to the Assessment Act



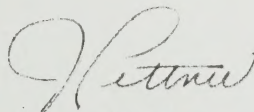
Ontario

Ministry
of
Revenue

A GUIDE TO THE ASSESSMENT ACT

A Guide to the Assessment Act has been prepared by the Assessment Policies and Priorities Branch, Ministry of Revenue to facilitate referencing of leading court decisions and interpretation of the Assessment Act. It has been designed to be used as a reference source by Property Assessment Program staff, lawyers and the public.

While every effort has been taken to provide accurate summaries of the court decisions and the commentary pertaining to the legislation contained in the Assessment Act, the Guide cannot be construed as authoritative. In matters of case law and legal application, reference should be made to the pertinent statutes and the actual court decisions as the appropriate authorities.



W.J. Lettner
Assistant Deputy
Minister

November 1983





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An Introduction to the Guide

"All real property in Ontario is liable to assessment and taxation" (Assessment Act, section 3). Although there are exceptions, this phrase constructs the framework for property assessment - the largest source of municipal funding in the Province. Monies raised by municipal taxation based on real property assessment amount to billions of dollars each year. Municipal services, education, and community programs are all paid for by municipal taxation. Many provincial grants to municipalities are premised on property assessment. Its impact is far-reaching.

Property assessment is governed mainly by the Assessment Act. The subject is a complex one and the courts are often called upon to interpret the meaning of the Act. This guide provides commentary and case summaries of leading court decisions which may help explain some of the more widely used sections of the Assessment Act. Other relevant decisions are listed at the end of each subsection should more research be required.

It is our hope that this Guide will be a useful tool in assisting the assessor and the public in arriving at understandable, fair and equitable assessments. It is in that spirit that these contents are submitted.



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How to use this Guide

HOW TO USE THIS GUIDE

This Guide is arranged in section order according to the sections of the Assessment Act. Each section begins with the actual wording of the legislation in italic print and, where appropriate, is followed by commentary in regular type print. Case summaries and a list of additional court decisions are in bold print.

The Guide may be used in several ways. If you know the section number of the Assessment Act, you can turn to those pages in the Guide which have that same section number on the upper right hand corner of the page. For example, if you are particularly interested in seeing how the courts have dealt with easements, then just turn to those pages numbered 8.

If, on the other hand, you want to find out what the Assessment Act has to say about a certain topic, then the best place to start is the "Topic Index" in the appendices at the back of this Guide. Once you have located the subject that concerns you, it will refer you to the appropriate section of the Assessment Act and the Guide. For example, if you are interested in farmland assessment, the index will refer you to sections 13(1), paragraph 15, 18(3) to (9), 7(10), 20 and 21.

Once you have found the section that relates to your topic, all that remains is for you to read through that section, starting with the quote from the Assessment Act and working on through the commentary and the case summaries. Although the facts in the various cases referred to may not be same as those that concern you (every case in assessment tends to be different from every other case), the cases demonstrate the way the courts deal with assessment issues and as such give some insight as to how your problem could be approached.

The Guide also provides some legislation from other Acts that are assessment related, e.g. the Municipal Act, the Conservation Authorities Act.

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Another appendix is entitled an "Alphabetical Index of Cases" which will be useful if you have a specific case to look up. It refers you to the section of the Assessment Act that the case is considering. Those cases that have been summarized are marked with an asterisk (*).

Finally, there are two appendices, one dealing with "Legal Interpretation" and one with "Legal Phrases". In court decisions, judges frequently use legal jargon and these appendices will explain some of this terminology.

Throughout the Guide, there have been short forms used to denote the various court levels. For a description of the various courts and their jurisdiction, see Section 39. Below is a list of the court levels:

A.R.B.	- Assessment Review Board
C.A.	- Court of Appeal
C.Ct.	- County Court
C.J.	- County Judge
D.Ct.	- District Court
D.J.	- District Judge
Div. Ct.	- Divisional Court
H.C.J.	- High Court of Justice
O.M.B.	- Ontario Municipal Board
P.C.	- Privy Council
S.C.C.	- Supreme Court of Canada

Short forms are also used to denote 'reported' cases, i.e., cases where an account or description is given in a publication. This means that if you wish to read the entire case decision you could refer to the case as reported in one or more of the following publications:

D.L.R.	- Dominion Law Reports
M.P.L.R.	- Municipal Planning and Law Reports
N.R.	- National Reporter
O.L.R.	- Ontario Law Reports
O.M.B.R.	- Ontario Municipal Board Reports
O.R.	- Ontario Reports
O.W.N.	- Ontario Weekly Notes
S.C.R.	- Supreme Court Reports



GENERAL


How to use this Guide

No one expects that this Guide will turn the reader into an expert. It is hoped, however, that this Guide will provide some useful information concerning assessment law.

UPDATING
AND AMENDING

The Amendment Record Sheet has been designed to record all amendments, sequentially by number and date. This system allows the user to determine whether or not he/she has received all revisions to the Guide. It also eliminates any need to store covering letters in front of the Guide.

When amendments are received:

1. Locate on the Amendment Record Sheet the number, in the preprinted column that corresponds to the amendment number on the covering memo.
2. Enter the date you receive the amendments next to the appropriate number on the Record Sheet.
3. Remove old pages, add new pages per listing. A flag  indicates where a major change occurs.
4. Update Amendment Record Sheet. If there are any discrepancies or missing amendments, contact either:
 - (a) your Assessment Commissioner
or
 - (b) Ministry of Revenue,
Assessment Policies and Priorities
Branch,
P.O. Box 627,
33 King Street West, 6th Floor,
Oshawa, Ontario.
L1H 8H5
5. Destroy old pages.



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AMENDMENT RECORD

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No.	Date	No.	Date	No.	Date	No.	Date
1	August, 1984	19		37		55	
2	November/87	20		38		56	
3		21		39		57	
4		22		40		58	
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INTERPRETATIONS

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SECTION

DEFINITIONS

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Assessment...Insurance

INTRODUCTION This section explains what various terms mean in the Assessment Act. The most important definitions are commented upon below.

s.1. In this Act,

- (a) "assessment commissioner" means an assessment commissioner for a region as established by the regulations made under this Act;
- (b) "Assessment Review Board" and "Assessment Review Board established under this Act" mean the Assessment Review Board under the Assessment Review Board Act;
- (c) "assessor" means the assessment commissioner and anyone acting under his authority;
- (d) "collector's roll" means a roll prepared in accordance with the Municipal Act;
- (e) "corporation assessment" means the assessment of land liable to taxation, of which a corporation is the owner or tenant, and business assessment of a corporation, but does not include the assessment of land that is assessed to a person other than a corporation as a tenant;
- (f) "county" includes a district;
- (g) "county council" includes a provisional county council;
- (h) "county court" includes a district court;
- (j) "insurance company" means any company or fraternal society or other corporation transacting within Ontario any class of insurance to which the Insurance Act applies or is made to apply by any general or special Act of the Legislature,

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DEFINITIONS

Land, Real Property

LAND, REAL
PROPERTY

(k) "land, "real property" and "real estate"
include,

- (i) land covered with water,
- (ii) all trees and underwood growing upon land,
- (iii) all mines, minerals, gas, oil, salt quarries and fossils in and under land,
- (iv) all buildings, or any part of any building, and all structures, machinery and fixtures erected or placed upon, in, over, under or affixed to land,
- (v) all structures and fixtures erected or placed upon, in, over, under or affixed to a highway, lane or other public communication or water, but not the rolling stock of a transportation system;

INTRODUCTION

This description is important because a clear idea of what land and real property are is necessary to real property assessment. Difficulties associated with the definition in the Act will be discussed in this Guide under two headings: Structures and Fixtures, and Machinery and Equipment as "Land".

STRUCTURES
AND
FIXTURES

One test the courts have used to decide whether or not a given structure or fixture is "real property" is that of looking to whether or not the structure has been placed upon the land permanently or with the intention of permanence. The following case exemplifies the sort of reasoning used:

The Assessment Commissioner for the Municipality of Metropolitan Toronto v. EGLINTON Bowling Co. Limited. [1957] O.R. 621. (C.A., Sept./57)
Bowling alleys resting on a concrete base without actually being fastened to the substructure of the building were held to be assessable as real property. The bowling alleys were intended to remain in place as long as they were used for their particular purpose, and that was held to be a sufficient level of permanence to satisfy the requirements of the Assessment Act.



DEFINITIONS

Land, Real Property

In another case, the test of the intention of permanence was used to decide the question of whether or not mobile homes could be assessed.

JOHNSTON, Susanna Maude v. Sault Ste. Marie Board of Education and Regional Assessment Commissioner, Region No. 31. 5 M.P.L.R. 129. (D.Ct., Mar./78)
The mobile homes in question had been set in place on serviced lots and connected to water and electricity supply. The court held that the homes had become "structures" assessable as real property as soon as they had been put in one location with the intention of leaving them there for human habitation.

Moveable bunkhouses and sheds raised rather different considerations and therefore, different results, in this next case:

ONTARIO-Minnesota Pulp and Paper Co. Ltd. v. Township of Atikokan. [1963] 1 O.R. 169. (H.C.J., Dec./62)

Sheds and bunkhouses which were moved from site to site in connection with a timber cutting operation were held by the court not to be real property, since they were intended to remain in any one location only temporarily. Other, more permanent structures which were part of a sawmill operation were assessable as real property, however.

The following case (also discussed under subsection 17(3)) provides a summary of all the tests used in determining whether a structure falls within the definition of land.

REV.

GREAT Lakes Paper Company Limited v. the Regional Assessment Commissioner, Region No. 32. (D.Ct., Feb./85)

A logging camp consisted of several buildings, a railway line and a tower. The court held that the intent of the company was to establish a base camp for its workers for a term of at least fifteen years. Further, after the trailers were moved to the site on wheels, the wheels were then removed and the trailers connected with each other, thus removing the mobility of the structures. Finally, on the issue of permanency, the buildings were connected to services and some were placed on concrete slabs. The court concluded that the structures were assessable as real property.



DEFINITIONS

SUBJECT

Land, Real Property

Where a building is erected on land, it becomes a fixture on that land and is therefore land within the meaning of this section. The two are then assessed together as a single entity. However, the following court decision was a fundamental departure from this traditional assessment practice, in holding that a building owned separately from the land could be assessed as a separate parcel:

REV.

KIWANIS Club of Brantford v. Corporation of the Township of Brantford et al. 44 O.R. (2d) 12; 24 M.P.L.R. 161. (Div. Ct., Dec./83)
Leave to appeal to C.A. refused - March/84.
An incorporated charitable institution erected a building on taxable lands. The court examined the lease arrangement between the two parties and from that determined that the building was under separate ownership from the land. The court held that the charitable institution met the exemption criteria of Section 3, paragraph 12 and therefore declared the building exempt from taxation.

The following cases also dealt with the assessability of structures and fixtures:

FARR, Eldon et al. v. the Corporation of the Township of Moore. 81 D.L.R. (3d) 755. (S.C.C., Feb./78) - Mobile homes

HERBSTREIT et al. v. Regional Assessment Commissioner, Assessment Region No. 15. 19 M.P.L.R. 162. (C.Ct., Aug./82) - Anchored boat used as restaurant

REV

MEDIACOM Incorporated v. City of Toronto et al. 19 M.P.L.R. 142; 38 O.R. (2d) 257. (H.C.J., July/82)
Confirmed by Div. Ct., June/84; 46 O.R. (2d) 692.
- Transit shelters

WARREN Bituminous Paving Co. Ltd. v. Corporation of Township of Otonabee. [1963] 1 O.R. 29. (H.C.J. Oct./62) - Asphaltic concrete plant



DEFINITIONS

Land, Real Property

MACHINERY
AND
EQUIPMENT
AS "LAND"

Here again, permanence or the intention of permanence has figured prominently in the courts' reasoning as to whether or not a given object fell within the definition of "land" or "real property". Consider the following case:

NORTHERN Broadcasting Co. Ltd. v. Improvement District of Mountjoy. [1950] 3 D.L.R. 721.
(S.C.C., May/50)

Two heavy pieces of machinery were held by the court to be assessable even though they were not fastened in place except by their own weight and some connecting wires. They had been "placed" in position with some idea of permanence, and therefore fell within the definition of real property in clause 1(k)(iv).

The subject of machinery, even when it is real property, is complicated by the provisions of s. 3 para. 17 of the Assessment Act. Section 3 para. 17 will be dealt with later, but the following case is of interest with respect to clause 1(k)(iv):

GREENMELK Company Limited v. The Township of Chatham. [1955] O.W.N. 757. (C.A., June/55)
Large steel tanks were held by the court to be real property. Because the tanks were used to mechanically mix and chemically preserve animal food as part of a manufacturing process, the court found that they were exempt from taxation as "machinery... used for manufacturing" under s. 3 para. 17.

It goes without saying that each case will be found to depend on its own particular facts and circumstances. The following cases also speak to the issue of machinery and equipment as "land":

FORD Motor Co. v. Town of Ford City. 63 O.L.R. 410; [1929] 4 D.L.R. 597. (S.C.C., May/29)
- Gantry crane



DEFINITIONS

Loan Company...Telephone
Company

LYONS, Rodney John v. the Corporation of the Town of Meaford and Regional Assessment Commissioner, Reg. #25. 6 M.P.L.R. 245. (C.A., May/78) - Walk-in coolers

RICHMOND and Richmond v. Ashton. [1962] O.R. 49. (H.C.J., Nov./61) - Washers and dryers

- s.1. (l) "loan company" means a loan corporation within the meaning of the Loan and Trust Corporations Act;
- (m) "locality" means a public school section, a separate school zone or a secondary school district that comprises or includes territory without municipal organization and includes the board of any of them;
- (n) "Minister" means the Minister of Revenue;
- (o) "Ministry" means the Ministry of Revenue;
- (p) "municipality" means a city, town, village or township, and includes a locality for the purpose of making any assessment required for the levying in a locality of a tax for school purposes;
- (q) "person" includes a corporation, partnership, bridge authority, agent or trustee, and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;
- (r) "telephone company" includes a person or association of persons owning, controlling or operating a telephone system or line, but not a municipal corporation;



DEFINITIONS

Tenant

TENANT

(s) "tenant" includes an occupant and the person in possession other than the owner;

The concept of tenancy is important in a number of areas in assessment. Generally, the courts have held a person to be a tenant only if he or she has exclusive possession and right of control over the property in question. The following case dealt mainly with a question of exemption from taxation, but the definition of "tenant" was also discussed:

Re Uday SINGH and the City of Sudbury. 8 O.R. (2d) 377. (D.Ct., Mar./75)
Confirmed by Div. Ct., Dec./76.

A religious congregation had exclusive use of two rooms in a private home. The congregation paid no rent and occupied the rooms only by the personal permission of the owner. The court held that under these circumstances, the congregation was not a "tenant" under ss.1(s) of the Act.

The next case also concerned exemption, but once again a deciding factor was whether or not one of the parties was a "tenant":

Re City of CHATHAM and Township of Raleigh. [1965] 1 O.R. 168. (H.C.J., Sept./64)

An airport manager had complete control over the operation of the airport facilities, including: the right to receive revenue from the airport operation, the right to sublet excess space, and the right to assign the benefits of the agreement. The court ruled that the extent of the manager's rights over the property was such that he was a "tenant" within the definition in section 1(s).

The following case was mainly concerned with a question of business assessment and overall tax liability, but the definition of "tenant" was also considered:

REV.

Re BYERS Towing and Storage Co. Ltd. and Thompson et al. 25 M.P.L.R. 88. (H.C.J., April/84)
The subject land was municipally owned, but being used by a company that, under contract with the municipal police force, had the task of towing and storing illegally parked cars.



DEFINITIONS

Tenant

The court noted that the towing company had

1. control of the property,
2. ownership of the tools,
3. a chance of profit, and
4. a risk of loss.

It was therefore held that the company was in fact a tenant or lessee and subject to business assessment. Furthermore, the land itself was taxable and not exempt under s.3, para. 9.

A question of the definition of a tenant was also addressed in the following cases:

MEDIACOM Incorporated v. City of Toronto et al.

19 M.P.L.R. 142; 38 O.R. (2d) 257. (H.C.J., July/82)

Confirmed by Div. Ct., June/84; 46 O.R. (2d) 692.

ONTARIO-Minnesota Pulp and Paper Co. Ltd. v.

Township of Atikokan. [1963] 1 O.R. 169. (H.C.J., Dec./62)

A further discussion of tenancy will follow under Section 7.

s.1. (t) "trust company" means a trust company within the meaning of the Loan and Trust Corporations Act.



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SECTION

REGULATIONS

SUBJECT

REGULATIONS

s.2. (1) *The Lieutenant Governor in Council may make regulations,*

- (a) *authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act or the regulations made under this Act;*
- (b) *defining any word or expression used in this Act that has not already been expressly defined in this Act;*
- (c) *prescribing for the purposes of clause 34 (3)(b) a higher rate of interest than 6 per cent;*
- (d) *prescribing the form and method of application for the exemption described in paragraph 22 of section 3 and the information and documentation required to be filed by the applicant in support of the application;*
- (e) *describing types or classes of improvements or additions for which no exemption under paragraph 22 of section 3 will be made;*
- (f) *describing classes of persons, businesses or undertakings who may not apply to receive an exemption under paragraph 22 of section 3 and to whom no exemption will be made.*

(1a) *The Minister may make regulations,*

- (a) *establishing assessment areas and assessment regions for assessment purposes;*

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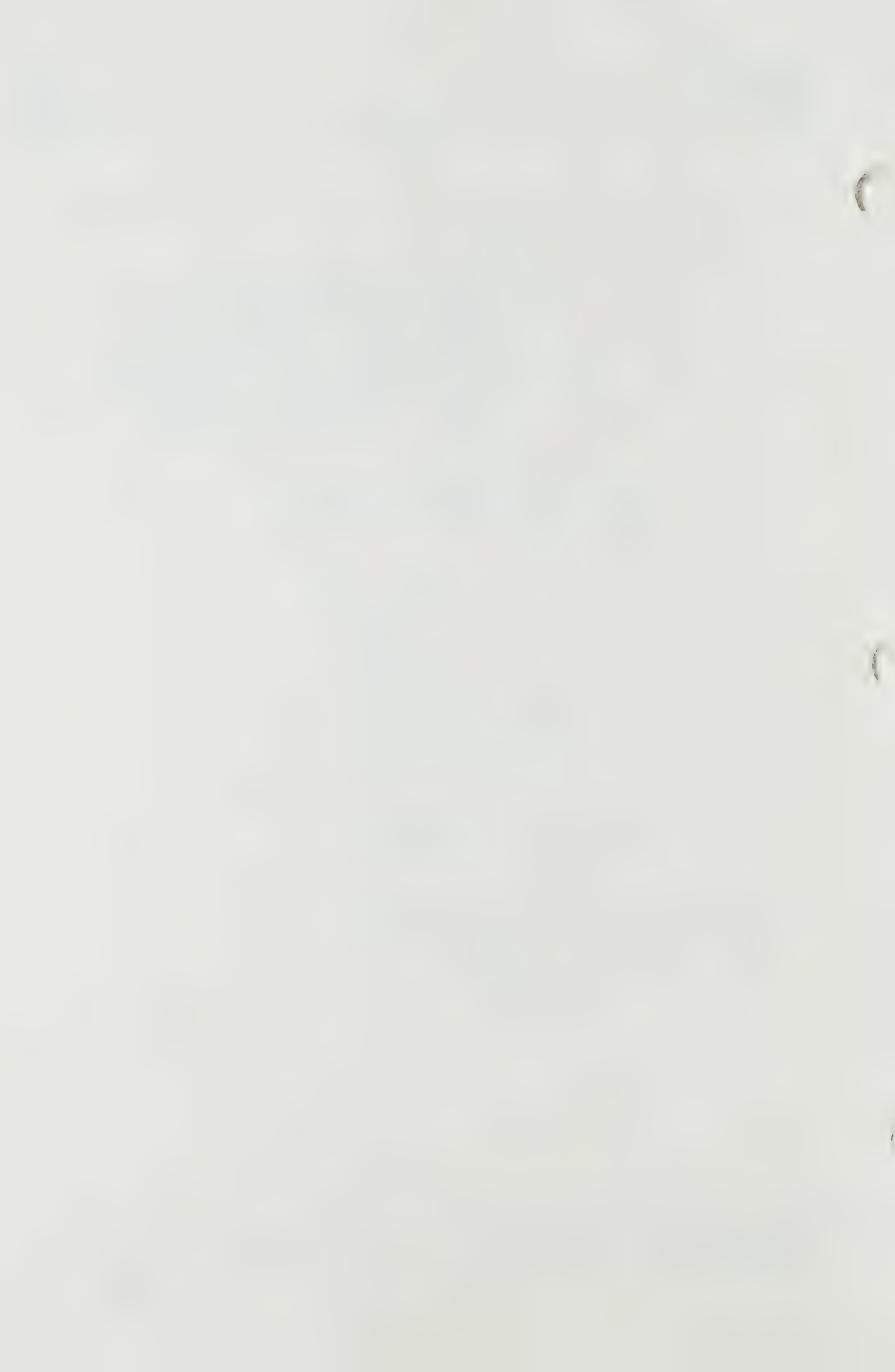
- (b) *prescribing any form that is required by this Act or the regulations under this Act or that, in his opinion, will assist in the administration of this Act, and prescribing how and by whom any form shall be completed and what information it shall contain;*
 - (c) *prescribing standards and procedures to be used for the purpose of equalizing assessments under this Act;*
 - (d) *prescribing the information and returns to be furnished by an assessment commissioner to any county or to any metropolitan or regional municipality;*
 - (e) *prescribing additional information to be included in the census to be taken by the assessment commissioner.*
- (1b) *A regulation made under this Act is, if it so provides, effective with reference to a period before it was filed.*
- (2) *The Minister may appoint assessment commissioners for assessment regions and in the absence for any reason of any assessment commissioner, the Minister may appoint an acting assessment commissioner who, while so acting, has all the powers and duties of an assessment commissioner.*
- (3) *The appointment of an assessment commissioner shall be effective for the purposes of this Act upon the publication of a notice of his appointment in The Ontario Gazette.*
- (4) *An assessment commissioner appointed under subsection (2) shall be deemed for the purposes of this and every other Act to be the assessor and assessment commissioner of and for every municipality and locality in the assessment region for which he is appointed.*



REGULATIONS

(5) An officer or employee of the Ministry who is thereunto authorized by the Minister may administer oaths and take and receive affidavits, declarations and affirmations for the purposes of, or incidental to, the administration of this Act, and every person so authorized has, in respect of any such oath, affidavit, declaration or affirmation, all the powers of a commissioner for taking affidavits.

No cases or comments.



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EXEMPTIONS

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Crown Land

EXEMPTIONS

s.3. *All real property in Ontario is liable to assessment and taxation, subject to the following exemptions from taxation:*

INTRODUCTION

This is a key section. Almost all real property in Ontario is assessable. Most of it is taxable. The following subsections outline certain classifications of real property which are specifically exempt from taxation. Note that the list provided is not comprehensive; many properties are exempted from municipal taxation by public and private statutes other than the Assessment Act itself. (See Appendix 1 for examples of exempting statutes.)

Whether or not a given property is exempt from taxation under any of these paragraphs is a question that can only be decided by a court of law, not by a tribunal such as the Assessment Review Board or the Ontario Municipal Board. (See Re DOWNTOWN Churchworkers Association of the Anglican Church of Canada, Diocese of Toronto, and the Regional Assessment Commissioner, Region No. 7 et al. 5 M.P.L.R. 261; 18 O.R. (2d) 302; 8 O.M.B.R. 249. (Div. Ct., Jan.78). Further appeal dismissed by C.A., March/79; 28 O.R. (2d) 662, summarized in the commentary under s. 39).

**CROWN LAND**

s.3. 1. *Lands or property belonging to Canada or any Province.*

The exemption granted under this section is limited to lands "belonging to" Canada or a Province. The seemingly straightforward idea of "belonging" can raise legal questions, as the following case demonstrates:

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2299A (84-07)



EXEMPTIONS

SUBJECT

Crown Land



The BRANTFORD Flying Club Ltd. v. the Regional
Assessment Commissioner, Region No. 20 et al.
(Div. Ct., Oct./85)

Leave to appeal to C.A. refused - Dec./85.
The subject land had been conveyed by the Crown
with the condition that if the land was not used
"for airport purposes" it was to be re-conveyed to
the Crown. The court held that, in spite of the
condition, the land was not owned by the Crown at
the time of the assessment, and therefore could
not be exempted under s. 3 para. 1.

Property owned by a foreign government gives rise
to related issues, although it does not actually
fall within s. 3 para. 1. This next case is of
interest:

YIN-TSO Hsiung V. Toronto Assessment Commissioner.
[1950] 4 D.L.R. 209. (H.C.J., May/50)

The court held that under International Law,
property owned by a foreign government, occupied
by its Consul and used for its public purposes,
was exempt from municipal taxation.



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EXEMPTIONS

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Indian Lands

INDIAN LANDS s.3. 2. *Property held in trust for a band or body of
Indians.*

No cases or comments.

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SECTION

EXEMPTIONS

SUBJECT

Churches, Cemeteries

CHURCHES

s.3. 3. *Every place of worship and land used in connection therewith and every churchyard, cemetery or burying ground.*

a) *Where land is acquired for the purpose of a cemetery or burying ground but is not immediately required for such purpose, it is not entitled to exemption from taxation under this paragraph until it has been enclosed and actually and bona fide required, used and occupied for the interment of the dead.*

b) *The exemption from taxation under this paragraph does not apply to lands rented or leased to a church or religious organization by any person other than another church or religious organization.*

The extent of the exemption afforded to cemeteries and places of worship is sometimes a matter of controversy. Manse, parsonages, and rectories, for example, are taxable, as the following case demonstrates:

Re MELVILLE Presbyterian Church Manse. (1926) XXXI O.W.N. 187. (C.J., Nov./26)

The court held that the exemption given to a church applied only to the church itself and to such immediately adjacent lands as were necessary to the church's ends. A manse which was not on the grounds surrounding the church did not qualify for the exemption.

The tax status of ministers' residences or parsonages was examined in more detail in the following case:

ST. MARY'S Anglican Church et al. v. the Assessment Commissioner of the City of Windsor. [1942] O.W.N. 102. (C.A., March/42)

The court looked at three classes of parsonages or ministers' residences:

1. parsonage and church structurally connected;
2. parsonage and church physically unconnected but on the same parcel of land;
3. parsonage and church on lands separated by intervening lands or streets.

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The court ruled that, as far as the question of exemption is concerned, all three classes mentioned above should be treated similarly. The primary use of a parsonage was as a place of residence for the minister, which the court ruled was not land used as a place of worship or "land used in connection therewith", even though some church related activities may be conducted on the premises.

This next case, however, shows that a residence may be exempt if it is necessary to the functioning of the cemetery or church:

Re The Trustees of CENTENARY United Church and the Regional Assessment Commissioner, Reg. #19 and The Corporation of the City of Hamilton. 27 O.R. (2d) 790. (C.Ct., Dec./79)

A caretaker was required to occupy an apartment in a church basement, to facilitate the carrying out of his duties of making inspections of the premises and monitoring the heating equipment. The court held that since the apartment's use was not merely a convenience but was materially conducive to the church's operation, the apartment as well as the rest of the church was exempt under s. 3 para. 3.

In the following case, this same sort of reasoning was applied to residences associated with a cemetery:

TORONTO General Burying Grounds v. Scarborough. [1959] O.W.N. 277. (H.C.J., June/59)

The court held that it was necessary to the operation of a cemetery that a superintendent and a gardener reside on the cemetery grounds, and that their residences therefore shared the cemetery's exemption from taxation.

An extension of this reasoning appeared in the following case:

MEMORY Gardens Ltd. v. The Township of Waterloo. [1955] O.W.N. 424. (H.C.J., Feb./55)

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A parcel of swampy land was used in connection with a cemetery to provide natural drainage, topsoil, and water, and to enhance the beauty of the site. The court held this land to be exempt from taxation, even though it was not actually used for graves. The court also held that the fact that the cemetery was operated for profit by a private corporation did not affect the exempt status.

A general key to these cases seems to be the question of who actually uses the land for what purpose. If the church or cemetery in question actually uses the lands to further its own ends, then the lands may be exempt from taxation. The exemption may apply to portions of an otherwise taxable building, as was shown in the Singh case (mentioned previously with respect to ss.1(s)):

Re Uday SINGH and the City of Sudbury. 8 O.R. (2d) 377. (D.Ct., Mar./75)

Confirmed by Div. Ct., Dec./76.

Two rooms used exclusively for worship in a private home were held to be exempt from taxation. The case did not fall within the exception under s. 3 para. 3(b), because (as noted earlier in the commentary on ss.1(s)) the religious congregation was not a "tenant".

Limits to the exemption seem to appear when it can be argued that the land is not being used in connection with a place of worship at all. Consider this next case:

The Trustees of the Amalgamated Congregation of the FIRST United Church v. the Corporation of the City of Hamilton and Regional Assessment Commissioner, Reg. #19. (H.C.J., Nov./72)

A vacant lot on which a church once stood but that was still owned by the church was held to be taxable, since it was not being used at all other than as a children's playground. A parking lot was held to be exempt, however, because it was being used by people attending a church across the street.



EXEMPTIONS

Churches, Cemeteries

Similar considerations of the actual use of a given property were influential in the reasoning in the following case:

Les SOEURS de la Visitation d'Ottawa v. the City of Ottawa. [1952] O.R. 61. (H.C.J., Dec./51)
The lands occupied by a religious order included nuns' residences and orchard and garden areas, as well as a Chapel. The court held that although the Chapel was exempt, the other lands were not being used in connection with a place of worship and so fell outside the ambit of s. 3 para. 3.

This next case gives yet another example of circumstances in which the courts have examined who actually used a property, and for what purpose, when deciding on a question of exemption:

ROMAN Catholic Episcopal Corporation London Diocese v. the Corporation of the City of St. Thomas and Regional Assessment Commissioner Reg. #23. (C.Ct., April/80)
The court held that a parish hall which was used mostly for renting to organizations outside the Church was not exempt under s. 3 para. 3, since it was primarily a social and recreational centre and not a place of worship.

One should note that a strict application of the concept of the use of given lands does not always end the issue of exemption. The following case dealt with a church which had been exempt under s. 3 para. 3, but had since become vacant and had been put up for sale:

Re The PRESBYTERIAN Church Building Corporation and Assessment Commissioner for Territorial District of Algoma. [1973] 3 O.R. 1007. (D.J., June/73)
The court held that a church which was vacant and for sale was still a "place of worship", whether it was actually being used as such or not. The church therefore would continue to be exempt from municipal taxation as long as it remained fundamentally a church.



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Churches, Cemeteries

On the other hand, vacant lands owned by a church for future development have been held to be taxable, as discussed in this next case:

REV.

Regional Assessment Commissioner, Region No. 22 v. ST. PAUL'S Evangelical Lutheran Church. (D.Ct., Oct./85)

A church owned a three-acre parcel of land, on which it had held a few outdoor services and on which it planned to construct a church building. The court held that the land was not primarily used as a place of worship, stating that the word "place" implied a building and not merely land.

The following cases also speak to the issue of exemption under s. 3 para. 3:

The Regional Assessment Commissioner, Region No. 5 v. CHRISTIAN Youth Centre. (C.Ct., Jan./78)
- Church camp

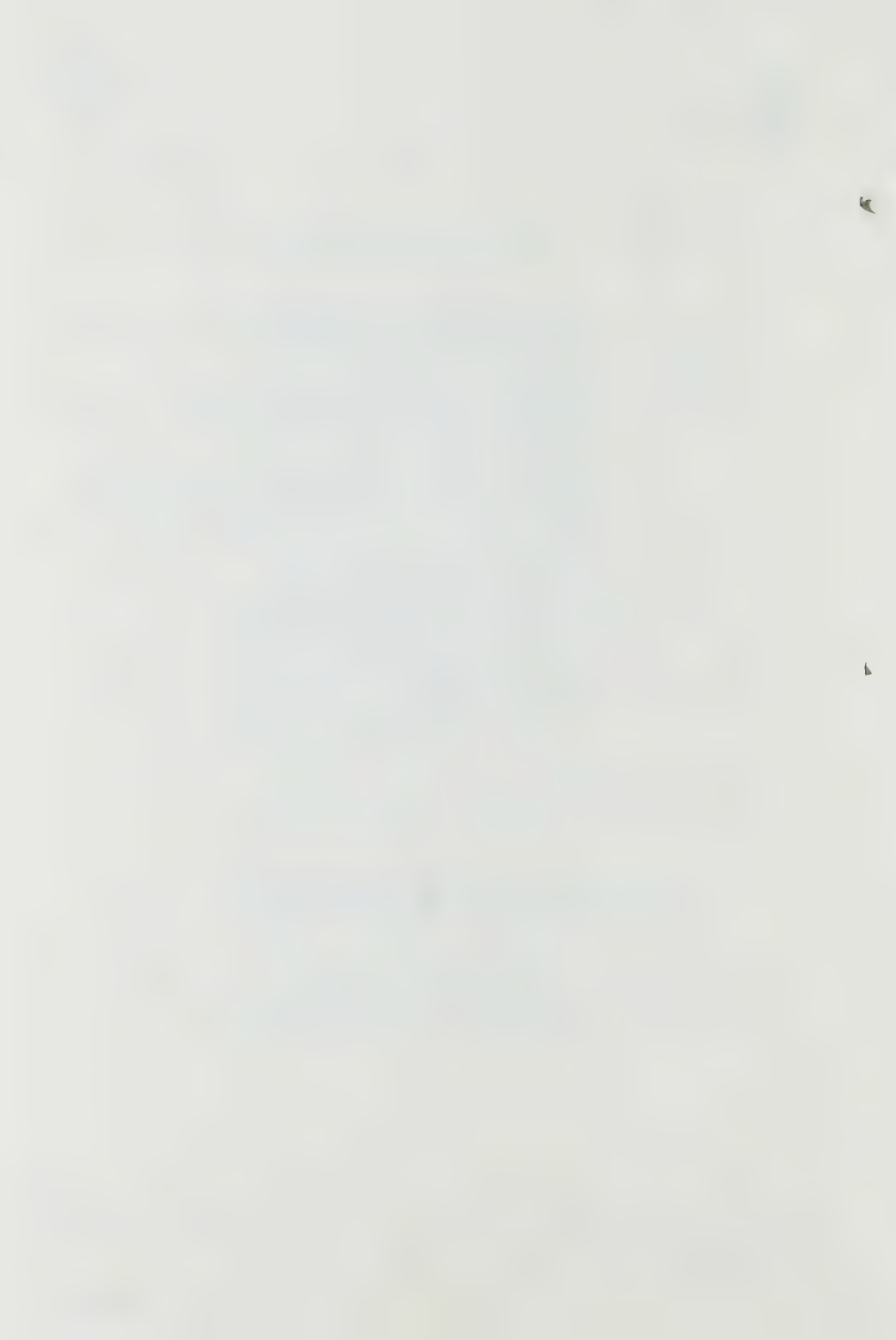
The UNITED Missionary Church v. the Corporation of the Town of Stayner. (O.M.B., Feb./49)
- Cabins, dining hall, and kitchen

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PUBLIC EDUCATIONAL INSTITUTIONS

s.3.

4. *The buildings and grounds of and attached to or otherwise bona fide used in connection with and for the purposes of a university, high school, public or separate school, whether vested in a trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, but not if otherwise occupied.*

a) *The exemption from taxation under this paragraph does not apply to lands rented or leased to an educational institution mentioned in this paragraph by any person other than another such institution or a person already exempt from taxation in respect of the property rented or leased.*

In order to qualify for exemption under this section, property must be bona fide used in connection with and for the purposes of a public institution of education. The onus is on the taxpayer to show that the use to which his property is put comes within the ambit of this section. Schools and universities usually present clear cases for exemption, but the limits of that exemption sometimes need definition by the courts, as the following cases demonstrate:

Re ST. ANDREW'S College and the Assessment Commissioner for County of York. 19 D.L.R. (3d) 503; [1971] 3 O.R. 91. (H.C.J., May/71) Certain staff members at a private school were required to occupy residences on the school premises. The staff members paid a small amount of rent for these residences, but since their presence was held to be necessary to the proper functioning of the school, the occupation of the residences was held to be bona fide used by the school. The residences were therefore exempt from taxation.

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The test used, then, was one of necessity. The taxpayer had to show that the occupation of the area in question was necessary to the operation of the institution. This same idea had been applied in an earlier case:

Re City of London and URSULINE Religious of The Diocese of London. [1964] 1 O.R. 587; 43 D.L.R. (2d) 220. (C.A., Feb./64)

One of the questions raised in this case was whether or not residences occupied by certain college staff members were in bona fide use by the college. The court held that since the residences were occupied as a matter of convenience and not necessity, such occupation could not be considered to be actual use and occupation by the college itself. The court also held that since the college did not have the right to grant degrees, it was not a "university" within the meaning of s. 3 para. 4.

The following case presents yet another example:

Re TRINITY College et al. and the City of Toronto. [1968] 2 O.R. 24. (H.C.J., Feb./68)

An off-campus residence provided rent-free to a college Provost was held not to be exempt because it was not necessary that the Provost live there, nor was he required to use the property for official entertaining as part of his duties.

This next case related to a number of businesses which occupied space on a university campus:

DONALDO Pianezza Beauty Salon et al. v. the Borough of North York et al. 19 O.R. (2d) 343. (C.A., April/78)

York University was exempt from municipal taxation under its own statute, as well as under the provisions of the Assessment Act. It was held by the court, however, that a beauty salon and certain other businesses renting space on the university campus were operating for their own profit and not for the purposes of the university, and so were not exempt from taxation.



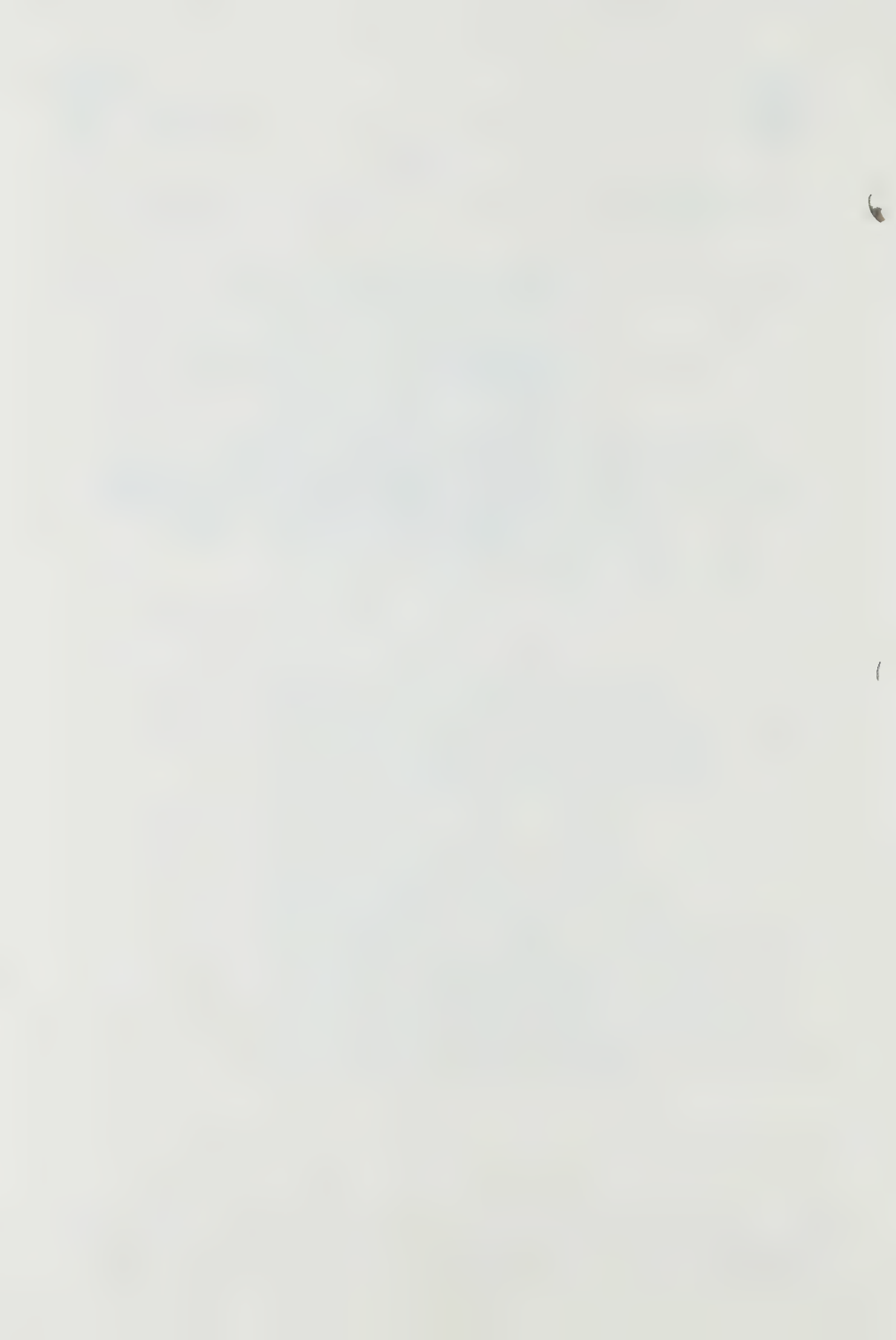
EXEMPTIONS

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The following cases also dealt with problems associated with exemption under s. 3 para. 4:

Re MCMASTER University and the City of Hamilton et al. 1 O.R. (2d) 378. (C.A., Sept./73)
Confirmed by S.C.C., May/75. - University residences

Re QUEEN'S University at Kingston and the Board of Governors of the Kingston Hospital and the Corporation of the City of Kingston and the Regional Assessment Commissioner, No. 5. 8 O.R. (2d) 135. (H.C.J., Feb./75)
- Parking garage





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RELIGIOUS AND EDUCATIONAL SEMINARIES

- s.3. 5. *The buildings and grounds of and attached to or otherwise bona fide used in connection with and for the purposes of a seminary of learning maintained for philanthropic or religious purposes, the whole profits from which are devoted or applied to such purposes, but such grounds and buildings are exempt only while actually used and occupied by such seminary.*
6. *The buildings and grounds not exceeding in the whole fifty acres of and attached to or otherwise bona fide used in connection with and for the purposes of a seminary of learning maintained for educational purposes, the whole profits from which are devoted or applied to such purposes, but such grounds and buildings are exempt only while actually used and occupied by such seminary, and such exemption does not extend to include any part of the lands of such a seminary that are used for farming or agricultural pursuits and are worked on shares with any other person, or if the annual or other crops, or any part thereof, from such lands are sold.*
- (a) *The exemption from taxation under this paragraph does not apply to lands rented or leased to a seminary of learning mentioned in this paragraph by any person other than another such seminary of learning or a person already exempt from taxation in respect of the property rented or leased.*

Land and buildings actually occupied and used by philanthropic or religious seminaries qualify for complete exemption from municipal taxation under s. 3 para. 5. Educational seminaries are exempt under s. 3 para. 6, but only to the extent of fifty acres of land. Problems often arise in connection with seminaries of learning, not only with respect to whether or not a given institution should qualify for exemption at all, but also concerning the precise subsection under which the institution should be categorized.

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The courts must examine the purposes and activities of each applicant for exemption. The following case illustrates some of the issues involved:

The CHRISTIAN Brothers of Ireland in Canada v. The Assessment Commissioner for the Counties of Wellington and Dufferin et al. [1969] 2 O.R. 374. (H.C.J., March/69)

The court examined the activities and the charter of a seminary, and found that it was indeed maintained for religious purposes. The exemption from taxation under s. 3 para. 5 was held to extend to about 90 acres of uncleared forest, on the basis that this forest enhanced the privacy and serenity of the seminary grounds. The exemption did not extend to buildings used only by visiting parents and guest lecturers, because these buildings were only a convenience, and not necessary to the seminary's operation.

The questions which the court asked in the above case are often asked in an effort to sort out the issues in s. 3: Who is using the land, and for what purpose? Is the use of the land necessary to the undertaking, or only a convenience? Consider these questions in relation to the next case:

Re WESTMINSTER College and City of London. [1963] 2 O.R. 25. (H.C.J., March/63)

Westminster College was a residence operated by the United Church of Canada for students of Western University. Because the College itself did not train the students for anything in particular, it was held not to be a seminary of learning and therefore not exempt under s. 3 paras. 5 and 6.

The following case involved different circumstances and reached a different result:

WORLDWIDE Evangelization Crusade (Canadian) v. Corporation of the Village of Beamsville et al. [1960] S.C.R. 49; 21 D.L.R. (2d) 8. (S.C.C., Nov./59)

The property in question was used to train students for missionary work. The court held that although the establishment had no fixed curriculum, it was exempt as a seminary of learning simply because its purpose was clearly to train people.



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The following case turned on a similar point - that the establishment in question existed for the primary goal of education:

Re SOCIETA Unita and the Corporation of the Town of Gravenhurst. 16 O.R. (2d) 785. (H.C.J., July/77)

Confirmed by Div. Ct., April/78; 6 M.P.L.R. 172. The activities at a children's camp were directed mainly toward the study of Italian language and culture. The court held the camp to be exempt from municipal taxation on the grounds that these predominantly educational activities qualified the camp as a seminary of learning.

The primary purpose of the activity on the subject land was also examined in this next case:

Re EMMANUEL Convalescent Foundation and The Township of Whitchurch. [1967] 2 O.R. 676; 65 D.L.R. (2d) 48. (C.A., Sept./67)

An institution which gave lectures to alcoholics as part of a rehabilitation program was held not to be exempt as a seminary of learning because it was not fundamentally devoted to teaching. The studies being carried on on the premises concerning alcoholism and drug addiction also did not justify an exemption, because they were not part of a program of learning.

The reasoning in this next case was more detailed in that the court enumerated a number of criteria to be considered with respect to exemption under s. 3 paras. 5 and 6:

Re INTER-Varsity Christian Fellowship of Canada and the Assessment Commissioner for the Region of Muskoka. 23 O.R. (2d) 589. (H.C.J., March/79)
It was held by the court that in order to qualify for exemption under s. 3 para. 5, an applicant had to show:

1. that the user of the lands had the intention of using them for a seminary for philanthropic or religious purposes,
2. that the participants had dedicated themselves to such purposes, and
3. that the whole profits from the property were used for the seminary on the property.



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The organization in this case was a camp operated in competition with other summer camps, and because it had not satisfied the court on the second or third points, it was held liable to municipal taxation.

The court in the following case listed slightly different criteria, appropriate to the different considerations involved.

The CHRISTIAN Academy of Western Ontario v. Township of Delaware. (C.Ct., March/78)
Confirmed by Div. Ct., Oct./78.

The court stated that five criteria had to be met in order for a property to be exempted under s. 3 para. 5:

1. The organization had to be a seminary of learning.
2. It had to be maintained for religious or philanthropic purposes.
3. The buildings and grounds had to be "of and attached to or otherwise bona fide used in connection with and for the purposes of" the seminary.
4. All of the profits had to be applied to the purposes of the seminary.
5. The buildings and grounds to be exempted had to be used and occupied by the seminary.

The court held that in this case the facts indicated that the seminary qualified both as a "religious" and as an "educational" seminary. The functions could not be separated. Because the seminary leased its lands, no exemption could have been granted to it as an educational seminary under the wording of s. 3 para. 6, but exemption was possible as a religious seminary under s. 3 para. 5. Since the organization in question qualified under the latter category, it was held to be exempt.



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Seminaries

In this next case, the court considered the meaning of the words "seminary of learning maintained for educational purposes":

SEAFARERS Training Institute v. the Corporation of the Township of Williamsburg. (Div. Ct., May/82)
A training institute, operated by the Seafarers International Union, offered short-term courses to persons interested in a sea career. It was seeking exemption from taxation as an educational seminary. The court examined the meaning of the word "education" and stated that it should be given the kind of broad interpretation it has in its common usage. The court held that education could include the training of persons for a skilled trade (e.g. plumbers, electricians, seafarers, etc.) and should not be limited to the teaching of liberal arts. Most importantly, the court held that to qualify as a seminary of learning, the organization or the person seeking exemption must have students, physical facilities, teachers or instructors, and a curriculum. The property was declared exempt.

The following case touched on similar issues:

Michael ZANGARI et al. v. the Corporation of the City of Sudbury and the Regional Assessment Commissioner for Region 30. (Div. Ct., April/85)
Confirmed by C.A., Nov./86.

A plumbers' and pipefitters' union used most of the subject building as a training centre for its members. The court held that although the use of the property was similar to that of a seminary of learning, the primary use was for union purposes. Exemption was denied.

The following cases also discussed exemption under s. 3 paras. 5 and 6:

RELIGIOUS SUMMER CAMPS

ASSOCIATED Gospel Churches v. the Regional Assessment Commissioner, Region No. 13 and The Corporation of the Township of Brock. 9 M.P.L.R. 287. (Div. Ct., Nov./79) - Exemption denied

BAPTIST Convention of Ontario and Quebec v. the Regional Assessment Commissioner, Region No. 17. (D.J., Oct./74) - Exemption granted

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The Regional Assessment Commissioner, Region No. 5
v. CHRISTIAN Youth Centre. (C.Ct., Jan./78)
- Exemption denied

The EASTERN Canada Synod Lutheran Church in
America v. Township of Eramosa. (C.Ct., Oct./76)
- Exemption granted

The EASTERN Canada Synod Lutheran Church in
America, of Kitchener v. The Regional Assessment
Commissioner, Region No. 4. (C.Ct., April/77)
- Exemption denied

The GOVERNING Council of the Salvation Army,
Canada East v. Regional Assessment Commissioner,
Region No. 14 et al. (H.C.J., Feb./84)
Confirmed by Div. Ct., Oct./84. - Exemption
granted

REV.

ST. ANDREW'S Evangelical Lutheran Latvian
Congregation in Toronto v. the Regional Assessment
Commissioner, Region No. 15 et al. (H.C.J.,
Sept./85) - Exemption denied

Re ST. VLADIMIR Ukrainian Institute and City of
Toronto. [1966] 2 O.R. 407. (H.C.J., Apr./66)
Confirmed by C.A., Oct./66. - Exemption granted

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Re AUGUSTINIAN Fathers (Ontario) Inc. and Regional
Assessment Commissioner, Region No. 14 et al. 52
O.R. (2d) 536. (H.C.J., Nov./85) - Religious
retreat

Re The GURDJIEFF Foundation: The Society for
Traditional Studies and The Corporation of the
City of Toronto and the Regional Assessment
Commissioner, Region No. 9. (H.C.J., Mar./81)
Dismissed by Div.Ct., Dec./82.
- Self-development centre

REV.

Re INTERNATIONAL Bible Students Association of
Canada et al. and Town of Halton Hills et al. 57
O.R. (2d) 42. (Div. Ct., Oct./86) - National
headquarters of religious sect

Re NATIONAL Ballet School and Assessment
Commissioner for Region No. 9. et al. 25 O.R.
(2d) 50. (H.C.J., July/79) - Dance school



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TORONTO Tai Chi Association v. Regional Assessment
Commissioner for Region No. 9 et al. (H.C.J.,
Aug./82) - Fitness club

Re The WESTERN Day Care Centre and The Corporation
of the City of London and Assessment Commissioner
for Region No. 23. 33 O.R. (2d) 493; 16 M.P.L.R.
35. (C.Ct., July/81) - Day care centre

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Public Hospitals

PUBLIC HOSPITAL

s.3. 7. *Every public hospital receiving aid under the Public Hospitals Act with the land attached thereto, but not land of a public hospital when occupied by any person as tenant or lessee.*

- (a) *Land owned and used by such a public hospital for farming purposes shall be deemed attached to the hospital within the meaning of this paragraph, notwithstanding that it is separated therefrom by a highway.*

Hospitals, like schools, usually present clear cases for exemption, but the extent of the exemption can sometimes be called into question. As the following case demonstrates, staff residences may be exempt, but only if the residences are an essential part of a hospital's operation:

Re YORK Central Hospital Association and the Corporation of the Township of Vaughan. [1972] 1 O.R. 244; 22 D.L.R. (3d) 632. (H.C.J., Oct./77)
Certain hospital staff members were required as part of their employment to live in a special residence. Although the staff members paid rent for these accommodations, the court held that the fact that the staff members' presence was necessary to the hospital's efficient operation, coupled with the strict control which the hospital exercised over the residence building, indicated that the occupation of the residences was occupation by the hospital itself. The residence was therefore exempt.

The following cases also addressed problems associated with exemption under s. 3 para. 7:

Re QUEEN'S University at Kingston and the Board of Governors of the Kingston Hospital and the Corporation of the City of Kingston and the Regional Assessment Commissioner, Region No. 5.
8 O.R. (2d) 135. (H.C.J., Feb./75) - Parking garage

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Public Hospitals

The RELIGIOUS Hospitallers of Hotel Dieu of St.
Joseph of the Diocese of London v. Regional
Assessment Commissioner, Region No. 27 et al.
(C.Ct., June/83) - Doctors' offices

SUDBURY Hospital Services v. the Assessment
Commissioner, Region No. 30. (D.Ct., May/74)
- Hospital linen services

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Highways, Municipal Property

HIGHWAYS

s.3. 8. *Every highway, lane or other public communication and every public square, but not when occupied by a tenant or lessee other than a public commission.*

MUNICIPAL PROPERTY

9. *Subject to section 26, the property belonging to any county or municipality or vested in or controlled by any public commission or local board as defined by the Municipal Affairs Act, wherever situate and whether occupied for the purposes thereof or unoccupied but not when occupied by a tenant or lessee who is liable to taxation, except property of a harbour commission used for the parking of vehicles for which a fee is charged.*

Problems which arise with respect to s. 3 para. 9 often concern lands owned by one body but leased to another. (See again the definition of "tenant" under ss.1(s) and the commentary associated with it.) The following case exemplifies the sort of issue which can appear:

Re: Regional Municipality of HALTON. (C.Ct., Aug./80)

Lands owned by the Municipality of Halton were leased to an organization which would have qualified for exemption if it had owned the lands itself. After a close examination of the wording of the Act, the court held that the fact that the organization did not own the land did not cancel the exemption. The lands were therefore held to be exempt.

In this next case, the court examined the effect of a long-term tenancy arrangement on the tax status of a municipal property:

Re Corporation of City of KITCHENER and Regional Assessment Commissioner for Regional Municipality of Waterloo. 23 O.R. (2d) 190. (Div. Ct., Oct./78)

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The City of Kitchener was the beneficial owner of a property under a lease-back agreement which provided for the reversion of the land to the City after 20 years. The court determined that the words "belonging to" used in section 3, paragraph 9 were not limited to absolute ownership; the rights to exclusive possession of the lands and to absolute ownership after 20 years were held to mean that the property "belonged to" the City. The property was therefore exempt from taxation.

The Chatham case, discussed earlier in connection with ss.1(s), is also relevant here:

Re City of CHATHAM and Township of Raleigh.

[1965] 1 O.R. 168. (H.C.J., Sept./64)

As noted earlier, the airport manager who was operating on the subject land was held to be a tenant. The land was therefore liable to municipal taxation in spite of the fact that it was owned by a municipality.

In this next case, the Supreme Court of Canada examined the meaning of "occupation" in s. 3 para. 9:

TORONTO Transit Commission v. the Corporation of the City of Toronto. 18 D.L.R. (3d) 68. (S.C.C., April/71)

Certain lands owned by a public commission had been leased to an investment company, but the lessee had not substantially entered upon or used the rented lands. The court held that as long as rent was being paid and a right of occupation had been established, the lands were indeed "occupied" by the lessee and therefore liable to taxation.

Land occupied by a foreign municipality comes under separate consideration, as the following case demonstrates:

The City of DETROIT v. the Corporation of the Township of Sandwich West. 10 D.L.R. (3d) 391. (S.C.C., March/70)

The City of Detroit was renting land in Ontario. The court held that a municipality outside the Province of Ontario was not a "municipality" within the meaning of the Assessment Act, and for this reason, among others, the land was not exempt from taxation.



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Highways, Municipal
Property

REV.

Lands owned by a regional municipality are deemed to be "property belonging to a municipality" for the purposes of s. 3, para. 9, as was demonstrated in this next case (also discussed under section 26):

BRAMPTON Hydro-Electric Commission v. Assessment Commissioner for Region No. 15 and the Corporation of the City of Brampton. (D.Ct., Aug./87)
A public utilities commission was occupying land owned by the Regional Municipality of Peel. The court held that by the provisions of ss.125(2) of the Regional Municipality of Peel Act (see Appendix 1-Related Legislation), Peel was a municipality for the purposes of s. 3, para. 9 and thus subject to s. 26 of the Assessment Act.

As noted above, section 3, paragraph 9 refers to section 26; it is the use of the land which will determine which of these two sections will apply to a parcel of land. Under section 26, the land becomes taxable. The following case examines this issue:

PETERBOROUGH Utilities Commission v. the Corporation of the City of Peterborough and Assessment Commissioner. (C.Ct., Dec./82)
Several parcels of land had been purchased by the municipality at the request of the utilities commission, part of which were used as a water filtration plant, part as a zoological park and the remainder unused. The key issue to be determined was whether the lands were "vested in and controlled by" the commission and thus exempt under sec. 3, para. 9 or whether they were "vested in and used for the purposes of" the commission and thus taxable under section 26. The court ruled that all the lands under appeal, with the exception of the water filtration plant, were not used for the purposes of the utilities commission and therefore were exempt.

The subject of tenancy will be given further treatment in the discussion of s. 7 of the Act. The cases listed below speak to issues relating to exemption under s. 3 para. 9:

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The BRANTFORD Flying Club Ltd. v. the Regional
Assessment Commissioner, Region No. 20 et al.
(Div. Ct., Oct./85)

Leave to appeal to C.A. refused, Dec./85

- Flying club (summarized under s. 3 para. 1)

Re BYERS Towing and Storage Co. Ltd. and Thompson
et al. 25 M.P.L.R. 88. (H.C.J., April/84)

- Tow-away service (summarized under ss.1(s))

Re City of Hamilton and HAMILTON Harbour
Commissioners et al. 48 O.R. (2d) 757; 28

M.P.L.R. 1. (H.C.J. Oct./84) - Harbour
commission (federally established)

MEDIACOM Incorporated v. City of Toronto et al.
19 M.P.L.R. 142; 38 O.R. (2d) 257. (H.C.J.,
July/82)

Confirmed by Div. Ct., June/84; 46 O.R. (2d) 692.

- Transit shelters

The Corporation of the County of WENTWORTH v. the
Corporation of the Town of Dundas. (C.Ct.,
Feb./64) - County owned home for the aged



A GUIDE TO THE ASSESSMENT ACT

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SECTION

EXEMPTIONS

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Charitable Institutions

BOY SCOUTS
AND
GIRL GUIDES

- s.3. 10. *Property owned, occupied and used solely and only by The Boy Scouts Association or The Canadian Girl Guides Association or by any provincial or local association or other local group in Ontario that is a member of either Association or is otherwise chartered or officially recognized by it.*

REFORM
INSTITUTIONS

11. *Every industrial farm, house of industry, house of refuge, institution for the reformation of offenders or for the care of children, boys' and girls' home, or other similar institution conducted on philanthropic principles and not for the purpose of profit or gain, but only when the land is owned by the institution and occupied and used for the purposes of the institution.*

CHARITABLE
INSTITUTIONS

12. *Land of an incorporated charitable institution organized for the relief of the poor, The Canadian Red Cross Society, St. John Ambulance Association, or any similar incorporated institution conducted on philanthropic principles and not for the purpose of profit or gain, that is supported, in part at least, by public funds, but only when the land is owned by the institution and occupied and used for the purposes of the institution.*

A considerable number of organizations attempt to claim exemption under paragraphs 11 and 12 of s. 3. The courts have tended to interpret s. 3 para.11 very narrowly. In order to qualify for exemption under that paragraph, an organization must be of a type similar to those undertakings specifically listed.

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REV.

This next case provides one example of circumstances in which all requirements were met:

Re The ONTARIO Mission of the Deaf and the Regional Assessment Commissioner, Region No. 23 et al. (H.C.J. March/85)

Confirmed by Div. Ct., Nov./86.

The subject property was owned by a non-profit charitable organization, financed in part by public funds, and operated primarily as a home for deaf children. The court held that the property was exempt under s. 3 para. 11 as a home "for the care of children", but noted that if the same organization had used the same property for the care of deaf adults, it would not have been entitled to exemption.

Interpretation of s. 3 para. 12 has also been strict. The courts can be seen as examining whether or not a given charitable institution is:

1. organized for the relief of the poor,
2. similar to the organizations mentioned in paragraphs 11 and 12,
3. supported in part by public funds, and
4. the actual owner of the subject land.

An organization which is not definitely for the relief of the poor, or which does not receive public funds from a government source, does not qualify. The following cases exemplify the sort of reasoning that is used:

Re KIWANIS Club of Toronto and Assessment Commissioner of Metropolitan Toronto et al.
[1967] 2 O.R. 223. (H.C.J., April/67)

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A boys' and girls' club, although conducted on philanthropic principles, was held by the court not to be similar to the types of organizations listed in s. 3 para. 11. Furthermore, the club was recreational and not specifically "organized for the relief of the poor" as stipulated in s. 3 para. 12. The court therefore held that the property in question was not exempt.

The next case dealt with several of the exemption requirements:

CANADIAN Cancer Society v. the Corporation of the City of Toronto and Regional Assessment Commissioner, Region No. 9. (H.C.J., April/86)
The court held that the Society did not qualify for exemption under s. 3 para. 12 for three reasons: 1. the Society itself did not receive direct public funding, although it did receive funds from the Cancer Foundation which was publicly supported; 2. it was not similar to the Red Cross in its objects and activities; and 3. it was not organized for the relief of the poor, but rather was organized to cure cancer and to assist cancer victims, whether they be rich or poor.

This next case dealt with one specific point: the undertakings of a Humane Society do not qualify as "philanthropic" under s. 3 para. 12.

Re KITCHENER-Waterloo and North Waterloo Humane Society and City of Kitchener et al. [1973] 1 O.R. 490. (C.A., Nov./72)
The court held that the word "philanthropic" in s. 3 para. 12 referred to the love of mankind. A Humane Society established for the care of animals did not fit into this concept and therefore was not exempt.

The following case dealt with the fact that property must be owned by a philanthropic institution to be exempt under s. 3 para. 12:

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Re MARKHAM York Hospital et al. and Town of Markham. 12 O.R. (2d) 238. (H.C.J., Feb./76)
Two charities rented and occupied land under a 99-year lease from a hospital. The court held that even a long-term lease was not "ownership", and that the lands in question were not exempt.

In this next appeal, the court touched upon an interesting sidelight of this ownership problem, stating that as long as a property was "occupied and used" for the purposes of the charitable owner, it did not need to be occupied by the actual owner. The main thrust of the reasoning in the case centred, however, on whether or not the subject organization was organized for the "relief of the poor".

REV.

Re LDARC Corp. and City of London et al. 29 M.P.L.R. 9; 50 O.R. (2d) 677. (Div. Ct., June/85)
The organization that owned a home for the mentally retarded was supported in part by public funds. The home was operated by an association that leased the property from the owner and provided care for mentally retarded children without regard to the economic need of the children or their families. The court held that while it was not necessary that one organization both own and operate the property, the organizations in question lacked any aspect resembling "relief of the poor". Exemption was therefore denied.

The facts in the following case were different, particularly with respect to the "relief of the poor", and the result differed accordingly. Note the question of public funds, and who must receive them:

REV

Re CAMBRIDGE Rehabilitation Homes et al. and City of Cambridge et al. 49 O.R. (2d) 694. (D.Ct., Feb./85)

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EXEMPTIONS

Charitable Institutions

The owner of the subject property was a non-profit charitable organization that leased the land to an association for the purpose of providing housing for mentally retarded persons. The tenant association was funded in part by public funds. The court held that since the residents on the property either subsisted on public funds or came from families below the poverty line, the organization that owned the property was similar to an "institution organized for the relief of the poor." Further, the payment of public funds by the tenant to the owner meant that the owner was indirectly supported in part by public funds. Finally, the owner did not need to occupy the lands to secure an exemption as long as the property was used and occupied by a tenant in accordance with the purposes of the owner. Exemption was granted.

In the next case, a similar sort of situation occurred with respect to an application for exemption under s. 3 para. 11:

REV.

The SUPPORTIVE Housing Coalition of Metropolitan Toronto v. the Corporation of the City of Toronto et al. (C.Ct., Sept./84)

A non-profit organization owned a group home for psychiatric patients, but leased the property to another non-profit corporation for the actual management of the home. The court examined the relationship between the two organizations and the use to which the property was put, and held that the property was a house of refuge being used for the purposes of the owning institution. Exemption was granted under s. 3 para. 11.

The question of exactly what constitutes "relief of the poor" under s. 3 para. 12 has been the subject of considerable discussion. This next case is commonly cited:

Assessment Commissioner of the Village of Stouffville v. MENNONITE Home Association of York County et al. 31 D.L.R. (3d) 237. (S.C.C., Oct./72)



EXEMPTIONS

Charitable Institutions

The court held that in order to qualify for exemption under s. 3 para. 12, an institution had only to be substantially "similar" to the types of organizations specifically listed. The subject institution was a non-profit nursing home receiving public funds from a government source. The nursing home applied no means test to applicants for admission, but it did operate for the relief of those who were "poor". The word "poor" in this context did not refer to any fixed standard of poverty. The nursing home's residents were not totally destitute, but they were "poor" in a relative sense, in that they had very low incomes and they were in need of the nursing home's aid. The institution was held to be "similar" to "an incorporated charitable institution organized for the relief of the poor" and therefore exempt from taxation.

The approach indicated above was also used in the following case, but with different results:

REXDALE Presbyterian Senior Citizens Corporation v. The Corporation of the Borough of Etobicoke and the Assessment Commissioners for the Borough of Etobicoke and the Municipality of Metropolitan Toronto. (H.C.J., Dec./78)

The court examined the setup of a senior citizens' home, and found that the facts did not justify an inference that the home functioned for the relief of people who were "poor" in a conventional or relative sense. Many of the residents seemed to have sizeable assets and the rents charged were comparable to market rents. The subject institution had not discharged the onus of establishing that it fell within the exemption provisions of s. 3 para. 12 and therefore was held to be taxable.

The courts have defined the word "poor" to mean there must be some economic deprivation or need, as illustrated in this next case:



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Charitable Institutions

The Corporation of the City of London and Regional Assessment Commissioner Region No. 23 v. BYRON Optimist Sports Complex Inc. 23 M.P.L.R. 10. (C.A., April/83)

A charitable institution operated a recreational facility in an area where no other similar facility existed. Although it was recognized that there was a need for such sports facilities and that the area could be considered to be "recreationally poor", the court held that the institution was not organized for the relief of persons with economic deprivation or need. It was therefore taxable.

A number of issues, including "relief of the poor", were discussed in this next case:

FIRST Place, Hamilton v. the Corporation of the City of Hamilton and Assessment Commissioner of the Regional Municipality of Hamilton-Wentworth. 9 M.P.L.R. 119. (H.C.J., Dec./79)

The court's decision touched on three main points:

1. Property granted to a charitable organization only for the "life" of the building on the land was not "owned" by that organization. The requirements of s. 3 para. 12 were not met on this point.
2. The charter of the subject organization stipulated that the "relief of the poor" was one of the organization's objects, but insufficient evidence had been presented to discharge the applicant's onus of proving that the activities of the institution were in fact directed toward the relief of people who were relatively "poor". Once again, the requirements of s. 3 para. 12 had not been met.
3. Even if the applicant had not lost the case on the previous two points, space in the subject building which was rented out to commercial tenants could not have been exempted from taxation because that space was not being "used for the purposes of" the charitable organization.




EXEMPTIONS

Charitable Institutions

The following case did not turn on "relief of the poor", but rather the overall purpose to which the subject property was being put:

The GOVERNING Council of the Salvation Army, Canada East v. Regional Assessment Commissioner, Region No. 14 et al. (H.C.J., Feb./84)
Confirmed by Div. Ct., Oct./84.


REV.  The court first decided that the legal entity named "The Governing Council of the Salvation Army, Canada East" was, for the purposes of this appeal, the volunteer religious organization known as the "Salvation Army". The subject property consisted of summer camp facilities owned and used by the Salvation Army. The court held that although some of the facilities were rented out (at a loss) to other church groups, the primary purpose of the camp was spiritual and intended to allow the property's owner to carry on philanthropic work. The property was therefore exempt.


The following cases deal with questions of exemption under s. 3, paras. 11 and 12. They dealt with one or more of the major aspects of the exemption provisions but are listed under the major issue of contention in each appeal.

Organized for the relief of the poor

AUBURN Retirement Village of Peterborough Inc. v. Corporation of the City of Peterborough et al.
22 M.P.L.R. 173. (C.Ct., June/83)

BETHANY Lodge v. Assessment Commissioner for York, Assessment Region No. 14 and the Corporation of the Town of Markham. (H.C.J., Feb./75)

REV.  Re BIRCHWOOD Terrace Nursing Home Incorporated and the Assessment Commissioner for Assessment Region No. 32 Districts Kenora, Rainy River, Thunder Bay et al. (H.C.J., Sept./85)
Confirmed by Div. Ct., Oct./86.

REV.  CLINIQUE Ste-Anne Inc. v. the Regional Assessment Commissioner, Region #3 et al. (Div. Ct., June/86)



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GOLDEN Mast Incorporated v. the Corporation of the City of St. Thomas and the Regional Assessment Commissioner of Assessment Region No. 23. (C.Ct., July/83)

The MEMORIAL Boys' Club Inc. v. the Corporation of the City of London. (C.Ct., April/77)

Re MOORE Presbyterian Foundation and the Corporation of the Township of Moore et al. (C.Ct., Oct./84)

Re PENTECOSTAL Benevolent Association of Ontario and the Corporation of the Borough of Scarborough and the Assessment Commissioner, Region No. 11. 26 O.R. (2d) 552. (H.C.J., Nov./79)

Re PLANNED Parenthood of Toronto and the Corporation of the City of Toronto and the Regional Assessment Commissioner, Region No. 9. 113 D.L.R. (3d) 218; 29 O.R. (2d) 289; (Div. Ct., July/80)

Re ST. ANNE'S Tower Corp. of Toronto and City of Toronto. 41 D.L.R. (3d) 481; 1 O.R. (2d) 717. (H.C.J., Oct./73)
Reversed in part on other grounds by C.A., Nov./74; 5 O.R. (2d) 718; 51 D.L.R. (3d) 374.

Similar to cited organizations

The Regional Assessment Commissioner, Region No. 5 v. CHRISTIAN Youth Centre. (C.Ct., Jan./78)

Re CORBROOK Sheltered Workshop and Assessment Commissioner of Municipality of Metropolitan Toronto et al. [1969] 2 O.R. 540. (H.C.J., April/69)

Re INA Grafton Gage Homes and Township of East York. 40 D.L.R. (2d) 401; [1963] 2 O.R. 540. (C.A., June/63)

Les SOEURS de la Visitation d'Ottawa v. the City of Ottawa. [1952] O.R. 61. (H.C.J., Dec./51)



EXEMPTIONS

Charitable Institutions

Supported by Public Funds

Re DOWNTOWN Churchworkers Association of the Anglican Church of Canada, Diocese of Toronto and the Regional Assessment Commissioner, Region No. 7 and the Townships of Sherborne et al. (H.C.J., Sept./80)

LONDON Youth For Christ Incorporated v. the Corporation of the City of London. (C.Ct., April/77)

The Society of ST. VINCENT de Paul (Barrie Stores) v. the Corporation of the City of Barrie and the Regional Assessment Commissioner, Region No. 16. (C.Ct., July/81)

Owned and Occupied

Re GOVERNING Council of the Salvation Army, Canada East and Regional Assessment Region No. 22 et al. 21 M.P.L.R. 99. (H.C.J., March/83)

KIWANIS Club of Brantford v. Corporation of the Township of Brantford et al. 44 O.R. (2d) 12; 24 M.P.L.R. 161. (Div. Ct., Dec./83)
Leave to appeal to C.A. refused - March/84.



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Public Libraries

CHILDREN'S
AID
SOCIETIES

s.3. 13. *The property of a children's aid society discharging the functions of a children's aid society under the Child Welfare Act, whether held in the name of the society or in the name of a trustee or otherwise, if used exclusively for the purposes of and in connection with the society.*

PUBLIC
LIBRARIES,
AGRICULTURAL
SOCIETIES

14. *The property of every public library and other public institution, literary or scientific, and of every agricultural or horticultural society or association, to the extent of the actual occupation of such property for the purposes of the institution or society.*

(a) *For the purposes of this paragraph, an agricultural society under the Agricultural Societies Act shall be deemed to be in actual occupation where the property of the society is rented and the rent is applied solely for the purposes of the society:*

The meaning of the word "public" in s. 3 para. 14 was discussed in the following case:

The Corporation of the City of Toronto v. TORONTO Jewish Library Association. (H.C.J., Oct./63)
The court ruled that the word "public" in s. 3 para. 14 referred to the aggregation of members of the community, and not necessarily to the receipt of public funds. The library in the instant case was not receiving public funds, but the collection of Judaic literature that it contained was available to persons outside the Jewish community. The library was held to be exempt from municipal taxation.

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Public Libraries

The definition of "property" as it related to leasehold interests was discussed in this next case:

Re The Regional Assessment Commissioner, Region No. 10 et al. and the ROYAL Ontario Museum. 12 O.R. (2d) 778. (Div. Ct., May/76)
The word "property" in s. 3 para. 14 was held not to include leasehold interests in land. Land being rented to a museum by a non-exempt party was therefore held to be liable to municipal taxation.



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Machinery, etc.

BATTLE SITES

s. 3.

15. *Land acquired by a society or association by reason of its being the site of any battle fought in any war, and maintained, preserved and kept open to the public in order to promote the spirit of patriotism.*

EXHIBITION BUILDINGS

16. *The land of every company formed for the erection of exhibition buildings to the extent to which the council of the municipality in which such land is situate consents that it shall be exempt.*

MACHINERY

17. *All machinery and equipment used for manufacturing or farming purposes or for the purposes of a concentrator or smelter of ore or metals, including the foundations on which they rest, but not including machinery and equipment to the extent that it is used, intended or required for lighting, heating or other building purposes or machinery owned, operated or used by a transportation system or by a person having the right, authority or permission to construct, maintain or operate within Ontario in, under, above, on or through any highway, lane or other public communication, public place or public water, any structure or other thing, for the purposes of a bridge or transportation system, or for the purpose of conducting steam, heat, water, gas, oil, electricity or any property, substance or product capable of transportation, transmission or conveyance for the supply of water, light, heat, power or other service.*

Numerous court cases have dealt with the question of exactly what should be exempt under s. 3 para. 17. Clarification of the words "manufacturing or farming purposes" has sometimes been necessary.



EXEMPTIONS

SUBJECT

Machinery, etc.

The following case dealt with the definition of "manufacturing" as it relates to s.3 para. 17:

Re ALLISTON Curling Club Inc. and the Town of Alliston. [1964] 2 O.R. 251. (C.A., June/64)
"Manufacturing" was held by the court to involve the production of new substances or articles different from the raw materials originally used. Ice was merely water in a different form. Ice-making equipment simply speeded up the natural process of freezing, and therefore was not exempt under s. 3 para. 17 because it did not "manufacture" any new product.

The same sort of reasoning was applied in this next case:

WARREN Bituminous Paving Co. Ltd. v. Corporation of Township of Otonabee. [1963] 1 O.R. 29. (H.C.J., Oct./62)

The production of asphaltic concrete was held to be "manufacturing" in that the end product possessed qualities different from the raw materials used. The machinery used in the manufacturing process was therefore held to be exempt.

The following case gave a broad interpretation of "farming purposes" as that phrase is used in the context of s. 3 para. 17:

The NORFOLK Fruit Growers' Association v. the Regional Assessment Commissioner, Region 20 et al. (C.Ct., Dec./82)

Confirmed by Div. Ct., Jan./84.

An association of farmers and fruit growers owned and operated refrigeration equipment to store apples produced by its members. The court held that this activity on the part of the association was an extension of the overall farming process and was the same operation that would be done on an individual farm were it not for the fact that it was more efficient to have a large central facility. The refrigeration equipment was therefore being used for "farming purposes" and exempt under s. 3 para. 17.

REV.



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Machinery, etc.

The next decision also dealt with refrigeration equipment used for "farming purposes" but because of different circumstances the exemption from taxation under s. 3 para. 17 was not granted:



PRODUCE Processors Limited v. the Regional Assessment Commissioner, Region No. 6 et al.

(D.Ct., Feb./85)

Confirmed by Div. Ct., Dec./85.

Although a vegetable processing plant was owned by farmers, there was no evidence that individual farmers anywhere else were carrying on the same activity on their own farms. In other words, the activities conducted at the plant did not fall within the scope of normal farming activities. The refrigeration equipment in the plant was therefore held not to be machinery and equipment used for farming purposes and therefore not exempt from taxation.

The courts have also been fairly broad in their interpretation of what sort of "machinery" can be exempted from taxation under s. 3 para. 17. This next case, while effectively overturned by the Metals and Alloys case (summarized later), demonstrated the broad approach taken by the courts with respect to this section:

The City of London v. John LABATT Limited.

[1953] O.R. 800. (H.C.J., June/53)

Certain tuns and tanks were used in the manufacturing of beer. The action in the tanks was essentially chemical, thereby involving a change in the nature of the materials which were introduced into the tanks. For that reason, the tuns and tanks were considered to be machinery necessary to the manufacturing of beer.

The actual use to which a given structure is put may have a bearing on the applicability of s. 3 para. 17, as this next case demonstrates:

Re WEYERHAEUSER Canada Limited and the City of Sault Ste. Marie. [1968] 1 O.R. 460. (D.Ct., Dec./67)

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EXEMPTIONS

Machinery, etc.

Buildings which were used as steam vats and as a dry kiln were held to be "machinery" in and of themselves, regardless of the fact that they could have been used for storage or other purposes. The kiln and the steam vats were used in the process of manufacturing veneer, and were therefore exempt from municipal taxation.

The courts have attempted to differentiate items that are either buildings and structures or machinery and equipment, as this next case demonstrates:

METALS and Alloys Co. Ltd. v. Regional Assessment Commissioner, Region No. 11 et al. 49 O.R. (2d) 289; 15 D.L.R. (4th) 250; 29 M.P.L.R. 62. (C.A., Jan./85)

Leave to appeal to S.C.C. refused, May/85; 51 O.R. (2d) 64.

The subject property consisted of an "item" that enclosed a metal shredder and thus muffled the sound the shredder made. The court held that it must be determined whether this "item" was a "building or structure", on the one hand, or "machinery" on the other. The court considered not only the use of the item but also its appearance, shape, and mode of construction, and concluded that it was a building intended to house machinery. It therefore did not qualify for exemption.

Metals and Alloys is significant in determining exemption under s. 3 para. 17. Previous decisions focussed solely on the "integration test" - that is, is the item's use an integral part of a manufacturing process (or one of the other activities listed in s. 3 para. 17)? Metals and Alloys requires additional questions to be addressed to determine the overall nature of the item:

"How is this item constructed? Why was it constructed in this shape, or of this material, or of this size? Does it look like a building? Is it built like a building? Does something happen within or on this item that is an integral part of the manufacturing process, as distinct from happening within or on a piece of machinery that the item encloses?"



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Machinery, etc.

REV.

The next decision dealt with what is a foundation for machinery and equipment under s. 3 para 17:

Re SHELL Canada Limited and Regional Assessment Commissioner, Region No. 26 et al. (H.C.J., May/85)

Confirmed by Div. Ct., Feb./87.

Exemption was sought for two structures with steel framework and concrete floors but no walls or roof on the basis that they were foundations supporting machinery and equipment. The court held that the structure was a typical building frame and floors, supplying only general support and not a foundation for machinery and equipment. In the court's words, "many industrial buildings are designed to contain specific types of industrial equipment. That does not make the entire building a "foundation" fitting within exemption 17. Much machinery simply sits on a floor. That does not make the floor a "foundation". In my view, a foundation, as the word is used in exemption 17, is a structure specially built to directly support a specific piece of machinery or equipment."

Further, it was held that a building with walls, a roof, heating and air-conditioning was not a foundation for machinery and equipment, nor was it machinery and equipment because these items did not manufacture anything, they merely provided a controlled environment.

The meaning of the phrase "transportation system" in s. 3 para. 17 was discussed in the following case:

Corporation of the City of Sault Ste. Marie and Danby v. ALGOMA Steel Corporation Ltd. 30 D.L.R. (2d) 436. (S.C.C., Oct./61)

The court held that the term "transportation system" in s. 3 para. 17 referred to those types of systems operated publicly. Railway equipment used on the premises of a large steel plant did not constitute such a system, and therefore was not exempt.

The following cases also deal with issues associated with s. 3 para. 17:

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Machinery, etc.

ALICE Hill Park Ltd. v. the Regional Assessment
Commissioner, Region No. 4. (C.J., Jan./71)
- Ski tow

REV.

CANADA Cement Lafarge Ltd. v. Regional Assessment
Commissioner, Region No. 5 et al. 31 M.P.L.R.
148. (H.C.J., Dec./85) - Pre-heater tower and
exhaust stack - currently under appeal.

REV.

DOFASCO Inc. v. Regional Assessment Commissioner,
Region No. 19. (H.C.J., Oct./85)
Confirmed by Div.Ct. - Dec./86
Leave to appeal to C.A. refused - Mar./87
- Pollution control equipment

FORD Motor Co. v. Town of Ford City. 63 O.L.R.
410; [1929] 4 D.L.R. 597. (S.C.C., May/29)
- Gantry crane

REV.

GREENMELK Company Limited v. The Township of
Chatham. [1955] O.W.N. 757. (C.A., June/55)
- Tanks used for preserving animal food
(summarized under ss.1(k))

NABISCO Brands Ltd. (formerly Christie, Brown and
Company, Limited) v. Regional Assessment
Commissioner, Region No. 15 et al. 25 M.P.L.R.
81; 45 O.R. (2d) 602. (H.C.J., April/84)
Confirmed by Div. Ct., Feb./86; 53 O.R. (2d) 736.
- Silos at flour miller - currently under
appeal.

ONTARIO Natural Gas Storage and Pipelines Ltd. v.
the Corporation of the Town of Oakville. (C.A.,
May/65) - Compressors

REV.

RALSTON Purina Canada Inc. v. the City of
Woodstock and the Regional Assessment
Commissioner, Region No. 23. (H.C.J., Dec./85)
- Silos and storage tanks - currently under
appeal.

REV

Re ST. LAWRENCE Cement Inc. and Regional
Assessment Commissioner for Region No. 15 et al.
52 O.R. (2d) 545. (H.C.J., Nov./85) - Concrete
storage silos - currently under appeal.



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Miscellaneous

MACHINERY PRODUCING ELECTRICITY

s.3.

18. *All machinery and equipment including the foundations on which they rest to the extent and in the proportion used for producing electric power for sale to the general public but not including any buildings, structures, structural facilities or fixtures used in connection therewith.*

FORESTRY PURPOSES

19. *One acre used for forestry purposes for every ten acres of the farm in one municipality under a single ownership but not more than twenty acres in all, and, where the total acreage consists of more than one separately assessed parcel, the assessor shall treat all such parcels as one parcel for the purpose of determining the exemptions under this paragraph and shall apportion the exemption to each parcel in the ratio of the acreage of each parcel used or partly used for forestry purposes to the total acreage of all parcels used or partly used for forestry purposes.*

MINERALS AND MINING MACHINERY

20. *The buildings, plant and machinery under mineral land and the machinery in or on such land only to the extent and in the proportion that such buildings, plant and machinery are used for obtaining minerals from the ground, and all minerals, other than diatomaceous earth, limestone, marl, peat, clay, building stone, stone for ornamental or decorative purposes, or non-auriferous sand or gravel, that are in, on or under land.*

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EXEMPTIONS

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Miscellaneous

TELEPHONE
AND TELEGRAPH
COMPANY
EQUIPMENT

s.3.

21. *All the machinery, plant and appliances, wherever situate, and all structures placed on, over, under or affixed to any highway, lane or other public communication, public place or water so long as such machinery, plant, appliances or structures are used by any telephone or telegraph company in connection with and as part of the operations of its telephone or telegraph business, and in this paragraph "telegraph company" includes a person or association of persons owning, controlling or operating a telegraph system or line, but does not include a municipal corporation owning, controlling or operating a telegraph system or line.*

No cases or comments.

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Improvements for Seniors
and Disabled Persons

IMPROVEMENTS s.3. FOR SENIORS AND HANDICAPPED PERSONS

22. *All alterations, improvements and additions commenced after the 15th day of May, 1984 and made to a parcel of land containing an existing residential unit for the purpose of providing accommodation for, or improved facilities for the accommodation of, a person who would, but for the accommodation or improved facilities provided, require care in an institution and who has attained sixty-five years of age or is a handicapped person, where the owner of the property applies to the Minister for the exemption and the exemption is approved by the Minister, provided that,*

i. a person who would otherwise require care in an institution and who has attained sixty-five years of age or is a handicapped person resides in the premises as his principal residence, and

ii. the land is assessed as residential and comprises not more than three residential units,

but the alteration, improvement or addition is not exempt where the person occupying the property in which the person who has attained sixty-five years of age or the handicapped person resides is in the business of offering care to such persons.

No cases or comments.

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Amusement Rides

AMUSEMENT
RIDES

- s.3. 23. *Roller-coasters, monorails, slides, ferris wheels, merry-go-rounds or other similar mechanical amusement devices on which a person rides, including any machinery, equipment, rails, supports and trestles used for their operation and the foundations on which they rest, erected or placed upon, in, over, under or affixed to land occupied by the operator of an amusement park.*



NOTE: In each of the years 1987, 1988 and 1989, the Minister of Municipal Affairs may make grants, upon such terms and conditions as the Minister considers necessary, to any municipality to compensate the municipality for a loss of tax revenue resulting from the exemption conferred by paragraph 23 of section 3 of the Assessment Act, as enacted by the Statutes of Ontario, 1986, chapter 69, subsection 1 (2). (section 2 of Bill 131)

No cases.

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Religious Institutions

RECREATIONAL s.4.
LAND OF
RELIGIOUS
INSTITUTIONS
BY MUNICIPAL
BY-LAW

The council of any local municipality may pass by-laws exempting from taxes, other than school taxes and local improvement rates, the land of any religious institution named in the by-law, provided that the land is owned by the institution and occupied and used solely for recreational purposes, on such conditions as may be set out in the by-law.

No cases or comments.

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Forestry Lands

LAND CEASING TO BE USED FOR FORESTRY PURPOSES s.5.

The council of a town, village or township may by by-law provide that, if any part of a farm exempted under paragraph 19 of section 3 ceases to be used for forestry purposes so as not to come within the purview of such paragraph, the assessor shall so report to the clerk and that the clerk shall forthwith amend the collector's roll by inserting therein,

- (a) the rates or taxes with which the farm would have been chargeable for the preceding three years if such part of the farm had not been exempt; or*
- (b) such portion of such rates or taxes as the by-law may provide or the council may by resolution deem proper,*

and such rates or taxes or portion thereof are collectable in accordance with such amended roll.

No cases or comments.

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Navy League

NAVY LEAGUE s.6.

The council of any local municipality may pass by-laws exempting from taxes, other than school taxes and local improvement rates, the land belonging to and vested in the Navy League of Canada under such conditions as may be set out in the by-law, so long as the land is occupied and used solely for the purposes of carrying out the activities of the Ontario division of the Navy League.

No cases or comments.

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BUSINESS ASSESSMENT

s.7. (1) *Irrespective of any assessment of land under this Act, every person occupying or using land for the purpose of, or in connection with, any business mentioned or described in this section, shall be assessed for a sum to be called "business assessment" to be computed by reference to the assessed value of the land so occupied or used by that person as follows:*

INTRODUCTION

This section provides for the establishment of business assessments, which are in turn the base for business tax. Business tax must be paid by persons carrying on any business described in s.7 in or on any real property in Ontario. Business assessment is calculated by multiplying the assessed value of the portion of real estate used for a given business by the appropriate percentage stipulated in ss.7(1). This business assessment is in turn multiplied by the commercial mill rate to yield the business tax payable. Business tax is not a tax on real property, but rather a tax on the persons carrying on business.

LIABILITY

The question of liability for business assessment raises three preliminary issues. The first is whether a person (or company - remember the broad definition of "person" in ss.1(g)) is in actual occupation of particular premises. The second is, if the person is found to be in occupation, whether that occupation is for the purpose of a business. The third is which person is really conducting the business. (This last point may be important with respect to parent and subsidiary corporations.)

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After these issues have been dealt with, the question that arises is the proper classification of the business. Business classification is treated under the lettered sections of ss.7(1).

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Occupation of Premises

The first issue that arises, then is the question of whether or not a given person is occupying or using lands. Whether or not a person can be said to be carrying on business in a given location may depend on a number of factors, including the control which that person exercises over the activities going on there. The control which a person exercises over a property may also determine whether or not that person can be said to rent or occupy that space at all. The following case illustrates both of these points:

Re SAGA Canadian Management Services Ltd. and the Corporation of the City of Ottawa and the Assessment Commissioner, Region No. 3. 16 O.R. (2d) 65. (H.C.J., May/77)

The court examined the contractual relationship between a university and a supplier of food services, and decided on the basis of the degree of control exercised over the operation, the ownership of the facilities, and the arrangements as to risk of loss and payment based on cost plus a management fee, that the food service company was simply managing a residence food service on the university's behalf. The company itself was not carrying on business in that location at all and therefore was not liable to business assessment. With respect to food service operations at two other university locations, the court held that the company was carrying on business and occupying real property for that business in that it had the exclusive right to occupy those premises for the purpose of providing food services. The university's right to occupy the premises for other purposes did not interfere with the food service company's right to carry on its business. The company was therefore liable to business assessment at those other two locations.

It is often difficult to define the exact nature and extent of the control which a person must exercise over an undertaking before he or she becomes liable to business assessment. Consider this next case:



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Re Mowat, Regional Assessment Commissioner, Region No. 3 and LORNE Murphy Foods Ltd. 23 D.L.R. (3d) 543; [1972] 1 O.R. 559. (C.A., Nov./71)
A caterer was operating a canteen for Government employees in space provided by the Government and with strict Government control over the services provided. The court held, however, that the Government's controls were not directed to the nature and degree of use of the premises. The caterer occupied the space for a competitive business undertaking and with the hope of earning a profit, and was liable to business assessment.

The following case also dealt with a company operating on Government lands and the extent of occupation:

Re DELTA Parking Systems Ltd. and the Township of Toronto. 48 D.L.R. (2d) 130; [1965] 1 O.R. 380. (H.C.J., Nov./64)

A company was employed by the Crown to provide parking services at an airport in return for a management fee. The company was responsible to and subject to the control of the Crown. The court held that the parking structure was under the full control of the Crown, not the company and that the company was merely performing a service for the Crown by providing parking facilities for the Crown's customers (i.e., the users of the airport). The court concluded it was the Crown and not the company that was in occupation of the property.

The next case provides another example of a business operating in a special relationship with the Crown. Different facts produced a different result:

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James W. POND v. Regional Assessment Commissioner, Region No. 9 et al. 31 M.P.L.R. 89; 52 O.R. (2d) 165. (H.C.J., Oct./85)



BUSINESS ASSESSMENT

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A special examiner, given authorization under statute to conduct hearings in civil actions, argued against liability to business assessment on the basis that he was operating as an instrument of the Crown, and therefore was not actually in occupation of premises for business purposes. The court used a four-fold test, and noted that the special examiner had (1) control, (2) ownership of tools (3) chance of profit, and (4) risk of loss. It was therefore held that the special examiner, not the Crown, was in occupation of the premises for business, and that he was therefore liable to business assessment and taxation.

Note that a person must actually possess or occupy the premises in question if he or she is to be liable to business assessment. This next case also illustrates this point:

Re KETCHESON & Hillier Twp. [1962] O.W.N. 181.
(C.Ct., May/62)

Confirmed by C.A; [1963] 1 O.R. 96.

Landowners who rented out housekeeping cottages successfully appealed against the business assessments levied against them. The court held that since they actually gave up possession of the cottages during the period of the tenancies, they could not be liable to business assessment levied on those properties.

A company can be deemed to be occupying a property before the undertaking reaches full production, as was done in this next case:

ILSCO of Canada Ltd. v. Corp. of the City of Burlington and Regional Assessment Commissioner No. 15. (H.C.J., Mar./77)

Manufacturers operating in a new plant were held liable to business assessment for an initial period during which the plant was not fully operational. They were occupying the premises, warehousing, and attempting to bring their manufacturing process up to standard, and the court held that this was sufficient business activity to incur liability.



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A company is not considered to be in occupation and therefore a business assessment cannot be levied before the actual activity of a business has truly begun. Consider this next case:

Robert Vendette, Regional Assessment Commissioner, Region No. 30 v. FALCONBRIDGE Nickel Mines Ltd. (O.M.B., Nov./79)

A mining company hired a contractor to sink a shaft on the mining company's land. The court held that this activity was merely preparatory to the business of removing ore, and that the mining company had not yet occupied the land for the purpose of carrying on its business. The company therefore was not yet liable to business assessment.

Business Purposes

After it has been determined that a person or company is in occupation of a property, then one must determine if that occupation is for the purpose of a business. Liability to business assessment generally arises when the use or occupation of a property is with the aim of producing a profit. Note, however, the exceptions contained in ss.7(1a).

This next court case dealt specifically with the question of the intent to make a profit. It must be noted that this case took place prior to the enactment of ss.7(1a).

Regional Assessment Commissioner, Region No. 29 and Municipal Clerk of the Corporation of the Town of Hearst v. CAISSE Populaire de Hearst Limitee. 143 D.L.R. (3d) 590; 21 M.P.L.R. 9. (S.C.C., Feb./83)

The Supreme Court of Canada upheld the rulings of the Court of Appeal and the Divisional Court when they found that the main or preponderant purpose of the credit union was to provide loans to its members at low cost and not to make a profit. The court held that the determining test for liability to business assessment was the preponderant purpose of an enterprise, that is, whether its aim was to produce a profit, not whether the enterprise was of a solely commercial nature. The court confirmed that the credit union was not liable to business assessment.

REV.



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While credit unions and caisses populaires are now specifically liable for business assessment under ss.7(1a), the reasoning in the foregoing case is still valid with respect to the liability for business assessment of non-profit organizations.

This case effectively overruled the traditional test, exemplified in the next appeal, of looking to whether or not a "business activity" was taking place:

Re WINDSOR-Essex County Real Estate Board and City of Windsor et al. 6 O.R. (2d) 21. (C.A., Sept./74)

The Windsor-Essex County Real Estate Board was incorporated "without the purpose of gain". The court did not find, however, that the stated lack of intention to make a profit precluded the issue of business assessment. Considering the actual activity of the Board, the court found that the preponderant activity was the operation of the Multiple Listing Service, which was available to non-members for a fee, and which did produce a profit. The court found the Board to be liable to business assessment.

Similar reasoning was used in:

Re PORTLAND Cement Association and the Corporation of the City of Toronto and the Regional Assessment Commissioner (Region No. 9). (H.C.J., Feb./82)
The subject Association was the "marketing arm" of its members in the cement manufacturing industry. Its function was that of promoting the use of cement in the competitive marketing of construction materials, and its revenue was derived from dues calculated by reference to its members' sales. The subject Association was liable to business assessment.



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This next case was decided in a similar fashion:

Les ATELIERS de l'Est v. Corp. of the Town of Hawkesbury et al. 12 M.P.L.R. 81. (C.Ct., Dec./79)

A woodworking shop which was part of a rehabilitation program for alcoholics did generate some income, although no actual profit had ever been made. The court held that since the shop was part of an alcoholic rehabilitation program which was not commercial in its objects or its nature, it was not liable for business assessment.



In the following case, the court applied the test of examining whether or not the "preponderant purpose" was to make a profit. The court held that the organization's function was profit and liability to business assessment resulted:

KITCHENER-Waterloo Real Estate Board Inc. v. Regional Assessment Commissioner, Region No. 21 et al. 32 M.P.L.R. 1. (H.C.J., Aug./86)

The preponderant activity of the subject organization was the operation of a multiple listing service, which facilitated the business activities of the member real estate agents. The court held that this purpose was part of the basic profit-making activity of the agents, and therefore that the organization carried out its function for the preponderant purpose of making a profit. The organization was liable to business assessment and tax.

The preponderant activity and purpose of the appellant was also examined by the court in the following case:

Re CREDITEL of Canada Ltd. and City of Hamilton et al. 25 O.R. (2d) 93; 10 M.P.L.R. 143. (H.C.J., May/79)

Creditel was established to pool and exchange information. The information was available only to members, and Creditel was not set up to produce a profit. The court held that Creditel was not liable to business assessment.

The following case had a similar result:

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The NORFOLK Fruit Growers' Association v. the
Regional Assessment Commissioner, Region 20 et al.
(C.Ct., Dec./82)

Confirmed by Div. Ct., Jan./84.

An association of apple growers formed to sort, package, store and market their produce was held not to be liable for business assessment. The Court concluded that the preponderant purpose of the association was to service the farmers and that the activities were an extension of their farming operations. The fact that profits were made did not cause it to be liable for business assessment.

Liability for business assessment results only when the occupation of a property is for the purpose of the business being carried on in the premises in question, not when the occupation of the premises is in connection with any business, as was illustrated in this next case:

CANADIAN Life Insurance Association Inc. v.
Regional Assessment Commissioner, Region No. 9 et
al. 22 M.P.L.R. 113. (H.C.J., May/83)
Confirmed by Div. Ct., March/84.

A non-profit association monitored all issues that related to or affected its life insurance member companies. The court ruled that it is not sufficient that the occupation of the property be used in connection with any business in order to be liable for business assessment. The occupation must be for the purpose of the business being carried on in its premises and it is that business which must have as its predominant purpose the making of profit. This association did not have as its purpose the making of profit and therefore was not liable for business assessment.

A different result was reached in the next case, simply because the organization in question was operating with the intention of producing a profit:



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Re LOMA Linda Foods (Canada) and the City of Oshawa. [1964] 1 O.R. 313. (H.C.J., Nov./63)
An organization was established by a church to manufacture and sell vegetarian food to the general public. The dominant and preponderating purpose of the organization was to manufacture and sell food and it was therefore held to be liable to business assessment in spite of the fact that all profits were to be returned to the church.

This next case raised a different issue, in that the subject properties were not being used for business activity:

Regional Assessment Commissioner, Region 12 v. NORTHERN Telecom Limited et al. 8 O.M.B.R. 482. (O.M.B., April/78)

A manufacturing corporation leased two residential apartments for the temporary use of visiting executives. No commercial activity took place in the suites. The court held that this use was residential, and not for business purposes, and that the apartments were not liable to business assessment.

It must be remembered that it is the intention to make a profit not whether a profit is actually made, which makes a person liable for business assessment, provided that the person is carrying on a business. Consider this example:

Toronto v. ONTARIO Jockey Club. [1934] 2 D.L.R. 254. (S.C.C., Feb./34)

The Woodbine Race-Course had not made a profit for two years, but it had been carrying on business and so was found liable to business assessment.

In the following case, the facts were different and so was the result:

REV.

Re ONTARIO Jockey Club and City of Toronto et al. 53 O.R. (2d) 151. (H.C.J., Jan./86)
Confirmed by Div. Ct., Dec./86.

The subject organization operated horse-racing tracks as a contribution to the horse-racing industry, and not for purposes of profit. The court held that it was not carrying on a business in the context of s. 7, and was not liable to business assessment and taxation.

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Again one must note that racetracks are now subject to business assessment with the 1986 amendment to the Assessment Act (ss.7(1a)).

This next case provides commentary on a quite different point, namely that the business activity that is relevant to business assessment must be the activity that was actually conducted in the subject taxation year:

UPPER Lakes Shipping Ltd. v. Regional Assessment Commissioner, Region No. 18 et al. (Div. Ct., Feb./85)

REV

The subject company argued that during the taxation year in question, the company's business activities were such that classification as a builder or contractor under ss.7(1)(f)(i) was less appropriate than classification as a transportation system. The court agreed that the business activity of the specific taxation year was the relevant consideration when determining the proper business classification. However, the evidence did not support the argument in favour of a transportation system, and the business assessment under ss.7(1)(f)(i) was allowed to stand.

Which Person

REV

After it has been settled that a business is being carried on at a given location, and liability to business assessment has been established, the question of exactly which person is conducting the business may become important. Sometimes, a parent corporation and its subsidiary (a separate company owned by the first) may carry on functions that are factually separate but still completely interconnected. This situation may raise questions with respect to what business is in operation, and what classification and rate of business assessment is appropriate. Consider the following example (which is under appeal to C.A.):



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Re SEAGRAMS Distillers (Ontario) Ltd. et al. and Regional Assessment Commissioner, Regions Nos. 9 and 10. 18 O.M.B.R. 475; 54 O.R. (2d) 289. (Div. Ct., April/86)

Two legally separate corporations functioned as sales organizations for the parent distillery corporation. They had no income, but were entirely funded by the parent company to deal exclusively with that company's products. The court held that their activities were part of the distillery business and therefore that they were carrying on business not as sales agents but as distillers.

The courts are usually hesitant, however, to disregard clear corporate separations unless the facts clearly warrant it. The next case is also instructive:

Re ALUMINUM Co. of Canada Ltd. et al. and Regional Assessment Commissioner, Region No. 5 et al. 54 O.R. (2d) 249. (Div. Ct., April/86)

The subject company carried on research and development for the benefit of its parent manufacturing companies. The court found that these activities were not part of the manufacturing business and also that the subsidiary was not a mere puppet of the other corporations. It was therefore held that the subject corporation was not operating as a manufacturer, but as a separate research company.

Separation of corporate entities does not necessarily benefit the taxpayer corporations. The following case provides an example of an O.M.B. decision that separated the subsidiary company from the parent, and resulted in a higher rate of business assessment and taxation:

SONY of Canada Ltd. v. the Regional Assessment Commissioner, Region No. 13. (O.M.B., March/85)
The subject corporation distributed goods manufactured in Japan by a parent company. It was argued that its business was therefore merely an extension of the overall manufacturing business, but the O.M.B. held that the company actually occupying and using the subject premises was a wholesaler and had to be classified accordingly.

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The following cases also speak to the matter of liability to business assessment. They have been divided according to the main issue addressed.

Occupation of Premises

ASCOT Hotels (North Bay) Ltd. v. Regional Assessment Commissioner, Region No. 28 et al. (D.Ct., April/86) - Motel space leased to railway

REV.

Re BYERS Towing and Storage Co. Ltd. and Thompson et al. 25 M.P.L.R. 88. (H.C.J., April/84) - Vehicle tow-away and storage pound

Re Regional Assessment Commissioner, Region No. 23 and COOMBS et al. 53 O.R. (2d) 724. (Div. Ct., Feb./86) - Motor vehicle licencing agent

Arthur DUNS福德 v. the Corporation of the Township of Tiny. (O.M.B., Oct./63) - Cottages and motel units

REV.

Re City of Hamilton and HAMILTON Harbour Commissioners et al. 48 O.R. (2d) 757; 28 M.P.L.R. 1. (H.C.J., Oct./84) - Harbour commission

MAPLE Leaf Services v. Townships of Essa and Petawawa. 37 D.L.R. (2d) 657; [1963] 1 O.R. 475. (C.A., Feb./63) - Army camps

The MORTGAGE Insurance Co. of Canada v. Regional Assessment Commissioner Region No. 20 and Corp. of the City of Brantford. (H.C.J., May/81) - Mortgagee in possession of tennis club

VIG Northern Canadian Estates Ltd. v. Corporation of the City of Windsor. (Div. Ct., May/83) - Public bingo hall

Business Purpose

Re BESTWAY Springs Golf & Country Club and Beach, Regional Assessment Commissioner, Region No. 15. 29 O.R. (2d) 774; 115 D.L.R. (3d) 229. (C.Ct., Sept./80) - Private golf club permitting "pay as you play" non-members

CLUB Roma (St. Catharines) Inc. v. the Department of Municipal Affairs, Assessment Branch. (C.J., April/71) - Social club



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DOCTORS Hospital v. the Corporation of the City of Toronto et al. [1970] 3 O.R. 118. (H.C.J., April/70) - Non-profit hospital

GRAND Valley Construction Association v. City of Cambridge. (H.C.J., Feb./79) - Trade association

NORTH Bay Laurentian Ski Club v. the Corporation of the Township of Mattawan et al. (C.Ct., Jan./81) - Ski club admitting "day members"

Re OSHAWA Missionary College and City of Oshawa. 42 D.L.R.(2d) 114; [1964] 1 O.R. 307. (H.C.J., Nov./63)
- Confirmed by C.A., Mar./64; 43 D.L.R. (2d) 10.
- Church college operating a woodworking plant and book bindery

SAXE, Henry et al. v. the Regional Assessment Commissioner, Region No. 5. (C.J., Jan./78)
- Artist's studio

REV

Re VINELAND Growers' Co-operative Limited and the Corporation of the Town of Lincoln et al. (D.Ct., Nov./85) - Farmers' co-operative

Which Person

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AYLMER Foods Warehousing Limited v. the Regional Assessment Commissioner. (C.J., Oct./75)
- Subsidiary acting as warehousing company

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BUSINESS CLASSIFICATION

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Distiller

BUSINESS ASSESSMENT CLASSIFICA- TION INTRODUCTION

Once it has been established that a person(s) or company is occupying or using land for business purposes, the assessor's task then becomes one of classifying the business for business assessment purposes according to subsection 7(1). When deciding which category is appropriate, the courts usually look to the chief or preponderating business which is being carried on. The cases associated with the following subsections illustrate the sort of reasoning involved.

DISTILLER

s.7. (1) (a) The business of a distiller for a sum equal to 140 per cent of the assessed value of the land so occupied or used, exclusive of any portion of the land occupied or used for the distilling of alcohol solely for industrial purposes and for a sum equal to 75 per cent of the assessed value as to such last-mentioned portion.

The following case, which was discussed earlier with respect to business assessment liability under ss.7(1), examined the relationship between the parent and subsidiary companies to determine business assessment liability under clause 7(1)(a):

Re SEAGRAMS Distillers (Ontario) Ltd. et al. and Regional Assessment Commissioner, Region Nos. 9 and 10. 18 O.M.B.R. 475; 54 O.R. (2d) 289. (Div. Ct., April/86)

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BUSINESS CLASSIFICATION

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Wholesaler, Financial, Insurance

WHOLESALER,
FINANCIAL,
INSURANCE



s.7. (1) (b) *The business of a wholesale merchant, brewer, insurance company, loan company, trust company, express company carrying on business on or in connection with a railway or steamboats or other vessels, land company, loaning land corporation, bank, banker, credit union, caisse populaire or any other financial business, for a sum equal to 75 per cent of the assessed value of the land so occupied or used.*

In relation to subsection 7(1)(b), there have been several decisions dealing with the issue of what is a wholesale merchant. Consider the following case:

The Regional Assessment Commissioner, Region No. 20 v. MAPLE Leaf Mills Limited. (O.M.B., Nov./71)
A company involved in the purchasing, processing, packaging, and resale of seed objected to being assessed as a wholesale merchant under ss.7(1)(b). The court examined the facts and held that the company's preponderating business was that of a wholesale merchant. Assessment under ss.7(1)(b) was therefore held to be justified, regardless of the other activities in which the company was engaged.

Similar reasoning was used in this next case:

DONLANDS Dairy Limited v. the Regional Assessment Commissioner, Region No. 11. 1 O.M.B.R. 420.
(O.M.B., Sept./72)

Confirmed by C.A., Sept./73.

The activities of a dairy included the purchasing, homogenization, pasteurization, blending, and resale of milk and milk products. The court held that because the activities usually did not alter the essential nature of the milk, the preponderating business involved was still that of a wholesaler.

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The court in the following case examined a company's activities in relation to the concept of just what a "wholesaler" is:

BUCHMAN and Son Lumber Company Limited v. Regional Assessment Commissioner, Region No. 9 et al. 20 M.P.L.R. 78. (Div. Ct., Nov./82)

A lumber company sold rough lumber; approximately 10% of its sales were to persons for resale and 90% of its sales were to manufacturers for their own purposes of building crates and packaging of their own manufactured goods. The court found that this 90% of sales was to the end-user. The court held that to determine whether the lumber company was a wholesale merchant, there were two tests that had to be applied - the 'quantity test' and the 'end-user test'. It was argued that the company was a wholesale merchant because its sales were in large quantities but the court held that to be a wholesale merchant, the goods must be sold for the purpose of resale. In this case, most of the sales (90%) were to the end-user and therefore the company was not a wholesale merchant. The company was liable for business assessment at 30% under ss.7(1)(j) (now ss.7(1)(k)).

Note that in the foregoing case, the business assessment was levied under ss.7(1)(j) (now 7(1)(k)) when the specific designation under ss.7(1)(b) was rejected. Clause (k) of ss.7(1) is the "catch-all" clause under which business assessments are levied if none of the specific categories in the other clauses is found to apply. Some comments will be made on this clause later.

Here is one more example of a case in which the concept of a "wholesaler" was examined:

REV.

The Regional Assessment Commissioner, Region No. 10 v. MMC Video One Canada (Ont.) Ltd. (O.M.B. Feb./86)



BUSINESS CLASSIFICATION

Wholesaler, Financial
Insurance

The appellant was a supplier of video cassettes to rental outlets, and argued that this activity was not within the specific classifications in ss.7(1). The Board found, however, that since each cassette would be viewed many times by the people who rented them from the outlets, the appellant was in effect supplying large quantities of goods to parties other than the final users. The appellant was therefore properly classified as a wholesaler, under ss.7(1)(b).

Wholesalers are not the only businesses whose undertakings raise legal problems with respect to ss.7(1)(b). Consider the trust company in this next case:

Re UNITED Trust Co. et al. and the City of Toronto et al. 11 O.R. (2d) 318; 66 D.L.R. (3d) 60. (H.C.J., June/75)

Three trust companies were carrying on the activities of real estate agencies at certain locations. Objections were raised to assessments under ss.7(1)(b) at a 75% business assessment rate for those premises. The court held that the real estate activities were only one of many activities carried on by the companies and that the chief or preponderating business was still that of a trust company. They were held to be liable under ss.7(1)(b).

The following cases also dealt with classification under ss.7(1)(b):

REV.

BLUE Water Currency Exchange Ltd. v. the Regional Assessment Commissioner, Region No. 27. (O.M.B., April/86) - Currency exchange

REV.

Regional Assessment Commissioner, Region No. 9 v. BREWERS Warehousing Co. Ltd. (O.M.B., Jan/84) - Brewers warehouse distributing goods to licensees

Regional Assessment Commissioner, Region No. 9 v. CANADIAN Pacific Express and Transport Ltd. (O.M.B., Feb./83) - Express (courier) company



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SECTION

7 (1) (b)

BUSINESS CLASSIFICATION

SUBJECT

Wholesaler, Financial,
Insurance

The Regional Assessment Commissioner, Region No. 13 and the Corporation of the City of Oshawa v. FAMILY Trust Corporation. (C.Ct., Feb./79)
Confirmed by Div. Ct., Jan./80. - Trust company

MERCHANTS Paper Company (Windsor) Limited v. the Regional Assessment Commissioner, Region No. 27 and the Corporation of the City of Windsor.
(O.M.B., Nov./71) - Wholesale merchant

REV.

Regional Assessment Commissioner, Region 12 v. REGAL Paper Products Ltd. 17 O.M.B.R. 141.
(O.M.B., Nov./84) - Packaging products supplier

Regional Assessment Commissioner, Region No. 30 v. WESTBURNE Electric Supply Limited. (O.M.B., April/84) - Wholesale merchant

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SECTION

BUSINESS CLASSIFICATION

SUBJECT

Distributor

DISTRIBUTOR

s.7. (1) (c) The business of selling or distributing goods, wares and merchandise through a chain of more than five retail stores or shops in Ontario, directly or indirectly owned, controlled or operated by the seller or distributor, for a sum equal to 75 per cent of the assessed value of the land occupied or used in such business for a distribution premises, storage or warehouse for such goods, wares and merchandise, or for an office used in connection with such business.

One of the problems which the courts have faced in connection with ss.7(1)(c) is the interpretation of what "distribution premises" are. The court in the following case decided that the phrase "distribution premises" should be limited by the words that follow it:

BREWERS' Warehousing Co. Ltd. v. Village of Markham. [1963] 2 O.R. 79. (C.A., Feb./63)
Certain premises were used for over-the-counter retail sales and acceptance of home delivery orders. The court held that this use did not bring the properties within the narrower meaning of "distribution premises" as interpreted in light of the following words "storage" and "warehouse". The premises in question therefore were not liable to business assessment under ss.7(1)(c).

This next case dealt with different facts, but it pivoted around the interpretation of the same phrase:

CANTEEN of Canada Limited v. the Regional Assessment Commissioner, Region No. 19 and the Corporation of the City of Hamilton. (O.M.B., Jan./78)

The subject property served as a centre for the distribution of food to vending machines operating in a number of different locations. The court held that the property was a distributing centre and liable to business assessment under ss.7(1)(c).



BUSINESS CLASSIFICATION

Distributor

The following case also dealt with the issue of classification under ss.7(1)(c) and the distribution of goods to department stores:

Re Regional Assessment Commissioner, Region No. 18 et al. and HUDSON'S Bay Co. 42 O.R. (2d) 436. (C.A., June/83)

REV.
The operator of a large number of department stores owned and operated two warehouses from which goods were supplied to subsidiary stores and to unrelated retailers. The court held that the warehouses could not be assessed under ss.7(1)(c), because department stores had traditionally received legislative treatment different from "retail stores" as mentioned in ss.7(1)(c). The warehouses were to be assessed under ss.7(1)(b) as "wholesale" operations instead.



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BUSINESS CLASSIFICATION

SUBJECT

Manufacturer

MANUFACTURER

s.7. (1) (d) *The business of a manufacturer, including the business of a flour miller, maltster, a concentrator or smelter of ore or metals, and the business of obtaining minerals from the ground, for a sum equal to 60 per cent of the assessed value of the land so occupied or used, provided that a manufacturer is not liable to business assessment as a wholesale merchant by reason of selling by wholesale the goods that manufacturer manufactures on such land.*

In interpreting this clause, as with all of s. 7, the courts have tended to look to the preponderating purpose of the undertakings in question. This approach is exemplified in the following case:

City of Toronto v. LEVER Brothers Limited. [1942] O.R. 421. (C.A., June/42)

A soap manufacturer operated a "free gift store" where merchandise could be obtained in exchange for coupons from soap wrappers. The court, upon considering the real character of the business, held that the store was part of an advertising plan and therefore part of the manufacturing business as a whole. It was liable to business assessment under ss.7(1)(d).

The characterization of a given activity is also important with respect to ss.7(1)(d). Does the undertaking as a whole fit within the words of the clause? Consider this next case:

The Village of Delhi v. IMPERIAL Leaf Tobacco Company of Canada Limited. [1949] O.R. 636. (C.A., June/49)

A company's preponderating activity consisted of the purchasing, grading, drying, and storage of tobacco leaves. The court held that this activity was not "manufacturing", because it did not produce a product different from the raw material. The subject property was not liable for business assessment under ss.7(1)(d).

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BUSINESS CLASSIFICATION

Manufacturer

Premises used by a manufacturer for storage of its products are also liable for business assessment as a manufacturer as was determined in this next case:

CANADIAN Leaf Tobacco Co. Ltd. v. Chatham. [1944] 4 D.L.R. 145. (C.A., June/44)

A manufacturer of tobacco occupied two other premises in addition to its manufacturing plant. Tobacco was stored at the two locations for five months to two years in order to enhance the value of the tobacco. The court held that it was not necessary for manufacturing to be carried on on the particular premises but rather the requirement was that the premises be used for the purpose of the business of a manufacturer. Both locations were liable for business assessment at 60%.

The concept of "manufacturing" gives rise to numerous problems, and has also been discussed in the commentary on s. 3 para. 17. The specific facts of each case are very important, as the following appeal demonstrates:

REV.

Regional Assessment Commissioner, Region No. 3 v. CANADIAN Astronautics Limited. (O.M.B., Feb./86)

The subject company produced unique high-tech prototypes to answer the specific problems of its customers. The Board held that these activities were not "manufacturing" but rather research and development and that the company should not be assessed under ss.7(1)(d).

Another issue which has arisen is whether the production of software is manufacturing:

REV.

GEAC Canada Limited v. Regional Assessment Commissioner, Region No. 14. (O.M.B., June/86)

The subject company created very specialized software programs for use by libraries and trust companies. The Board held that changing a blank tape or disk to a programmed form was "manufacturing" because a product had been created which had a new quality.

The following cases also deal with classification under ss.7(1)(d):



BUSINESS CLASSIFICATION

SUBJECT

Manufacturer

REV.

The Corporation of the City of Hamilton and
Regional Assessment Commissioner, Region No. 19 v.
BAYCOAT Limited. (Div. Ct., Dec./86)
- Painting of steel coils

Re BRUCE Decker Industries Limited and the
Regional Assessment Commissioner, Region No. 23
and Corporation of City of London. (C.Ct.,
Mar./79) - Nickel chrome and zinc plating

DONLANDS Dairy Limited v. the Regional Assessment
Commissioner, Region No. 11. 1 O.M.B.R. 420.
(O.M.B., Sept./72)
Confirmed by C.A., Sept./73. - Dairy

The GOODYEAR Tire and Rubber Company of Canada
Ltd. and Metropolitan Warehouse Co. Ltd. v. the
Corporation of the City of Owen Sound. (C.Ct.,
May/69) - Warehousing company

The Regional Assessment Commissioner, Region No.
16 v. MAPLE Leaf Mills Ltd. (O.M.B., Feb./73)
- Grain storage facilities

REV.

Regional Assessment Commissioner, Region No. 19 v.
NEO Industries Limited. 17 O.M.B.R. 125.
(O.M.B., Jan./85) - Electroplating

ONTARIO-Minnesota Pulp and Paper Co. Ltd. v.
Township of Atikokan (No. 2). [1963] 1 O.R. 179.
(H.C.J., Dec./62) - Buildings used in tree-
cutting operation

The Assessment Commissioner for the Town of
Burlington v. PALETTA Brothers Meat Products Ltd.
(O.M.B., Jan./67) - Abattoir

G. WHITAKER and Co. Ltd. v. the Assessment Area of
Lake Ontario. (C.J., May/71) - Wool cleaning
and blending





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SECTION

BUSINESS CLASSIFICATION

SUBJECT

Chain Stores, Department Stores

CHAIN
STORES

REV

s.7. (1) (e) *The business of a department store or the business of selling goods or services through a chain of more than five stores, shops or outlets in Ontario, except a hotel or motel, for a sum equal to 50 per cent of the assessed value of the land so occupied or used.*

A common problem raised with respect to ss.7(1)(e) is whether or not a given undertaking is "selling ... services through ... outlets". The following case gives one example of this sort of issue:

Re Regional Assessment Commissioner, Region No. 20 and CANADIAN Medical Laboratories Ltd. 13 O.M.B.R. 38. (Div. Ct., Oct./81)

The activity of the subject company consisted mainly of the collection and analysis of urine and blood samples referred to it by medical practitioners. The court held that this activity constituted "selling ... services" and that the premises so used were "outlets" for these services, regardless of whether or not these premises were open to the public. The company was liable to business assessment under ss.7(1)(e) for the properties in question. The Court of Appeal, in November 1982, confirmed this decision and added that the Xerox decision had no bearing on this case.

It would seem from the foregoing case that an "outlet" can be almost any sort of fixed premises through or out of which "goods or services" are sold. The following case produced a different result simply because the subject company was able to argue that it was not "selling...services" at all:

Re XEROX of Canada Ltd. and Regional Assessment Commissioner, Region No. 10 et al. 127 D.L.R. (3d) 511. (S.C.C., Nov./81) followed the dissenting judgement in C.A., July/80; 115 D.L.R. (3d) 428; 30 O.R. (2d) 90.

The subject business consisted mainly of renting out photocopying machines, and providing supplies, repair and instruction associated with the machines' use. The court held that the leasing of these machines which would allow a customer to do his own photocopying, was not a "sale" of a service and that the properties in question therefore were not liable to business assessment under ss.7(1)(e).

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The point of exactly what "person" is (or is not) "selling goods or services" may be important, as this next case demonstrates:

REV.

Re TANDY Electronics Ltd. et al. and Regional Assessment Commissioner, Region No. 15 et al. 49 O.R. (2d) 668. (H.C.J., Feb./85)

Two corporations were operating a store in a joint venture arrangement whereby profits were split but risk of loss was covered by one party. The other corporation operated a number of other stores in similar arrangements and under the same name. The court held that the specific joint venture was the "person" operating the business at that one location and that ss.7(1)(e) was therefore inapplicable.

The next case dealt with the phrase "chain of more than five stores":

REV.

Regional Assessment Commissioner, Region No. 18 v. POTTER & Shaw Limited. (D.Ct., Sept./86)

The common owner of eight retail stores operated six as drugstores and two as photography supply and equipment stores. The court held that the word "chain" denoted a number of stores under a common ownership selling the same line of merchandise and therefore in this instance only the six drugstores were liable to business assessment under ss.7(1)(e).

The following cases also speak to the matter of business classification under ss.7(1)(e):

Re EXTENDICARE Ltd. and Borough of North York et al. (No. 2). 32 O.R. (2d) 292. (H.C.J., March/81)

REV.

FAMOUS Players Limited v. Regional Assessment Commissioner, Region No. 26 et al. (O.M.B., Aug./84)

Confirmed by Div. Ct., Nov./86 and C.A., March/87.



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SECTION

BUSINESS CLASSIFICATION

SUBJECT

Professionals, Agents

PROFESSIONALS, s.7. (1) (f) *The business of,*
AGENT

- (i) *a barrister, solicitor, notary public, conveyancer, physician, surgeon, oculist, optometrist, ophthalmic dispenser, physiotherapist, podiatrist, aurist, dentist or veterinarian, or a civil, mining, consulting, mechanical or electrical engineer, surveyor, contractor, builder, advertising agent, private investigator, employment agent, accountant, assignee, auditor, osteopath, chiropractor, massagist, architect or any person carrying on a business as an agent, or*
- (ii) *operating a radio or television broadcasting station, or*
- (iii) *publishing a newspaper, or a photographer, lithographer, printer or publisher, or*
- (iv) *operating a stock or commodity exchange,*
for a sum equal to 50 per cent of the assessed value of the land so occupied or used.

REV.

The most common issue raised with respect to ss.7(1)(f) is that of whether or not a given person is carrying on business as an agent in a given location. Agency can be a complex concept. The court in this next case examined the facts and decided that the subject company did not occupy or possess the subject property:

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BUSINESS CLASSIFICATION

Professionals, Agents

Re DELTA Parking Systems Ltd. and the Township of Toronto. 48 D.L.R. (2d) 130; [1965] 1 O.R. 380. (H.C.J., Nov./64)

A company was employed by the Crown to provide parking services at an airport. The Crown maintained strict control over the operation, received all revenue generated, and paid the company a fee. The court held that the business of the company was not that of an agent as contemplated by the Assessment Act in ss.7(1)(f). The subject company merely provided management services, and the Crown occupied the premises. The company therefore was not liable to business assessment for the property in question.

The court in this next case examined the activities of a business in light of the meaning of the word "agent" to determine whether the business should properly be classified under ss. 7(1)(f) as an agent or 7(1)(c) as a distributor:

Town of Timmins v. BREWERS' Warehousing Co. Ltd. [1962] O.R. 536. (C.A., March/62)

The warehousing company received products from the brewers, stored, delivered and sold the products, remitting the proceeds to the brewers after deducting a "handling charge". The court interpreted "agent" as used in clause (f) to mean "a person who carries on an agency business or practises a profession or calling in the pursuit of which he holds out his services to the public as an agent". In the case of the warehousing company, it acted as the sole means under Ontario law by which the brewers could distribute their product to the public. The court concluded that the activities of the warehousing company were that of a distributor and not that of an agent and therefore it was assessable under ss.7(1)(c).

The following cases also dealt with issues associated with classification under ss.7(1)(f):

REV.

Re Regional Assessment Commissioner, Region No. 23 and COOMBS et al. 53 O.R. (2d) 724. (Div. Ct., Feb./86) - Issuers of motor vehicle licences



BUSINESS CLASSIFICATION

Professionals, Agents

MARATHON Realty Co. Ltd., Conship Ltd. and Tormon
Assembly Agency Ltd. v. the Regional Assessment
Commissioner, Region No. 11. (O.M.B., May/83)
- Receiving and shipping

Fritz SCHULLER v. the Regional Assessment
Commissioner, Region No. 16 and the Corporation of
the Town of Collingwood. (O.M.B., July/72)
- Photographer

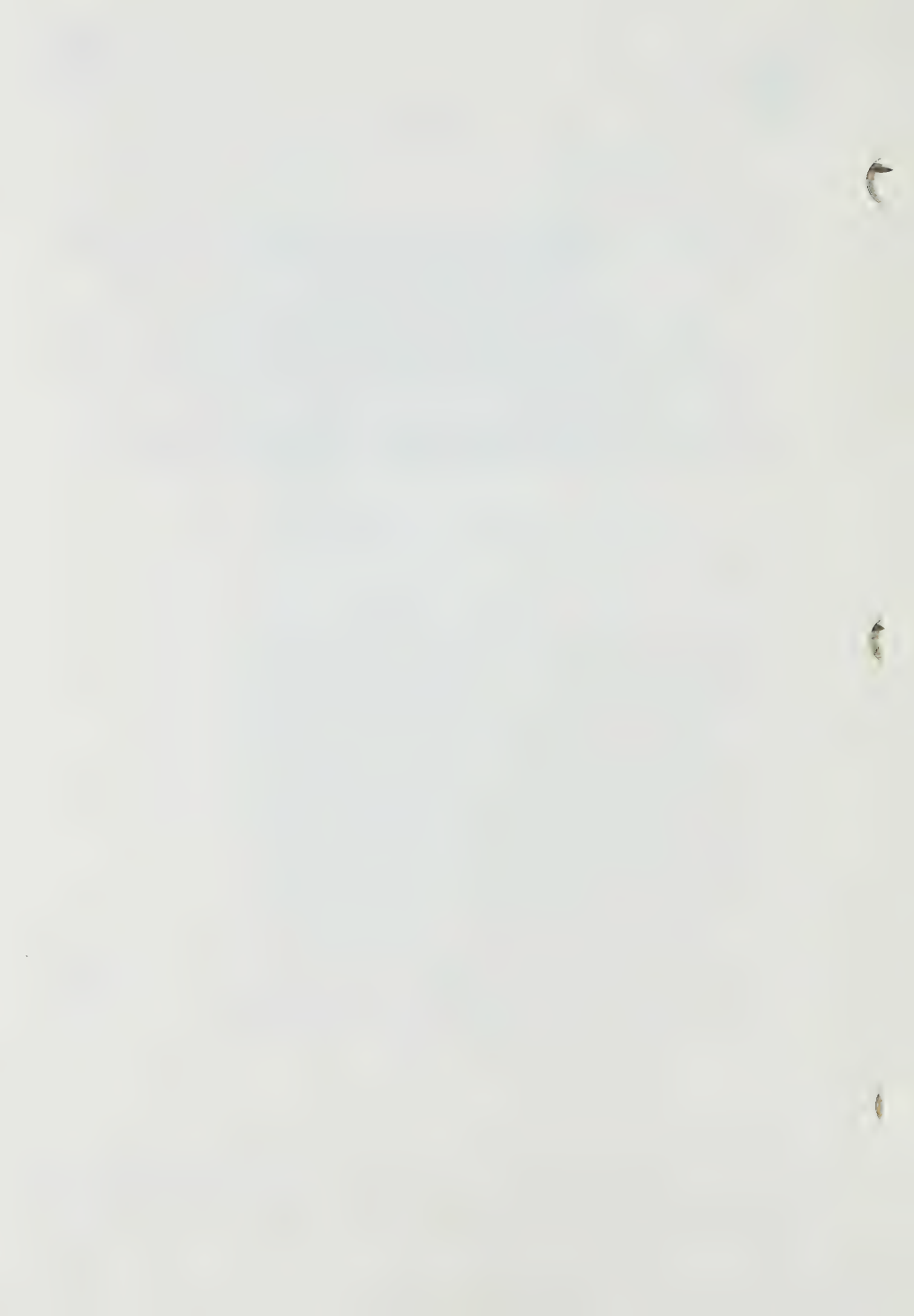
Regional Assessment Commissioner, Region No. 10 v.
TELEVISION Sports Network et al. (O.M.B.,
Mar./87) - Television broadcasting station

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SECTION

BUSINESS CLASSIFICATION

SUBJECT

Transportation, Credit Unions,
Race Tracks, Parking Lots

TELEPHONE COMPANY,
TRANSPORTATION SYSTEM

s.7. (1) (g) The business of,

(i) a telegraph or telephone company, or

(ii) a transportation system, other than one for the transportation or transmission or distribution by pipe line of crude oil or liquid or gaseous hydrocarbons or any product or by-product thereof or natural or manufactured gas or liquefied petroleum gas or any mixture or combination of the foregoing, or

(iii) the transmission of water or of steam, heat or electricity for the purposes of light, heat or power,

for a sum equal to 30 per cent of the assessed value of the land so occupied or used, except a highway, lane or other public communication or public place or water or private right of way, occupied or used by such person, exclusive of the value of any machinery, plant or appliances erected or placed upon, in, over, under or affixed to such land.

TRANSMISSION OF
GAS AND OIL

(h) The business of transportation, transmitting or distributing by pipe line crude oil or liquid or gaseous hydrocarbons or any product or by-product thereof or natural or manufactured gas or liquefied petroleum gas or any mixture or combination of the foregoing, for a sum equal to 30 per cent of the assessed value of the land so occupied or used excluding any pipe line liable to assessment under section 23 or 24.

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BUSINESS CLASSIFICATION

Transportation, Credit Unions
Race Tracks, Parking Lots

RACE TRACK

(i) *The business of a race track, for a sum equal to 30 per cent of the assessed value of the land so occupied or used.*

CAR PARK

REV

(j) *The business of a car park, for a sum equal to 25 per cent of the assessed value of the land so occupied or used.*

BUSINESS NOT
MENTIONED

REV.

(k) *Any business not specially mentioned before in this section, for a sum equal to 30 per cent of the assessed value of the land so occupied or used.*

Clause (k) of ss.7(1) is the "catch-all" clause. Any person who is occupying or using land for a business not mentioned in the other clauses in ss.7(1) may be assessed under ss.7(1)(k). Retail stores, for example (other than chain stores) are usually assessed under this clause. In the foregoing discussion of cases concerning ss.7(1) clauses (a)-(j), the businesses which were not held liable under a specific clause but which were generally liable to business assessment usually had their assessments fixed at a 30% rate under ss.7(1)(k).

PROFIT

REV.

s.7. (1a) *Notwithstanding that the activity of carrying on the business of a credit union, caisse populaire, stock exchange, commodity exchange or race track may not produce, or be intended to produce, a profit, every person occupying or using land for the purpose of or in connection with any of those business activities shall be assessed for a sum to be called "business assessment" computed in the manner set out in subsection (1) in respect of that business.*



BUSINESS CLASSIFICATION

Transportation, Credit Unions
Race Tracks, Parking Lots

EMPLOYEE
PARKING
LOTS

- s.7. (2) *Irrespective of any assessment of land or of any assessment under this Act, every person who is liable to be assessed for business assessment and who provides without charge parking facilities for the vehicles of his employees shall be assessed for a sum (to be called business assessment) equal to 25 per cent of the assessed value of the land so used for employee parking that is reasonably necessary for such purpose as determined by the assessor, but such person shall not otherwise be assessable for business assessment in respect of such land.*

SHARED
PARKING
LOTS

- (3) *Irrespective of any assessment of land or of any business assessment under this Act, every person carrying on business in one of a group of premises in which business is carried on where land for parking is made available by the owner of the land, or by anyone claiming under him, without charge to customers of or persons having business in one of such premises in such group in common with the customers of or persons having business with the occupants of other such premises in the group shall be assessed for a sum (to be called business assessment) equal to 25 per cent of the assessed value of that portion of the land made available for parking which is in the proportion to the whole of the land so made available that the assessed value of his premises is to the total assessed value of the premises occupied by the group exclusive of the land made available for parking.*

The following appeal dealt with the applicability of ss.7(3):

FOODEX Inc. et al. v. the Regional Assessment Commissioner, Region No. 13. (O.M.B., April/84)
The appellant company had separate corporate divisions that operated two separate restaurants on each of two properties. The company argued that ss.7(3) was applicable with respect to the shared parking areas. The Board held however that only one "person" - namely the appellant company - was carrying on business at the locations, and therefore ss.7(3) was not applicable.

REV.



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BUSINESS ASSESSMENT

SUBJECT

General

BUSINESS TAX

- (4) *Every person assessed for business assessment is liable for the payment of tax thereon and the tax assessed does not constitute a charge upon the land.*

TRANSPORTATION OF FUEL BY MANUFACTURER

- (5) *Where a manufacturer also carries on the business of a transportation system for the transportation or transmission or distribution by pipe line of crude oil or liquid or gaseous hydrocarbons or any product or by-product thereof or natural or manufactured gas or any mixture or combination of the foregoing, he shall not be assessed for business assessment as a manufacturer in respect of such transportation system.*

EFFECT OF GENERAL WORDS

- (6) *Wherever in this section general words are used for including any business that is not expressly mentioned, such general words shall be construed as including any business not expressly mentioned, whether or not such business is of the same kind as or of a different kind from those expressly mentioned.*

PREPONDERATING BUSINESS

- (7) *Subject to subsection (8), no person shall be assessed in respect of the same premises under more than one of the clauses of subsection (1), and, where any person carries on more than one of the kinds of business mentioned in that subsection on the same premises, he shall be assessed by reference to the assessed value of the whole of the premises under that one of those clauses in which is included the kind of business that is the chief or preponderating business of those so carried on by him in or upon such premises.*



BUSINESS ASSESSMENT

General

Issues concerning ss.7(7) arise often, because many businesses carry on more than one kind of activity. As ss.7(7) states, a person carrying on more than one type of business on the same premises is to be assessed under only one clause of ss.7(1) according to the main or preponderating business being carried on. A good example of the application of this sort of reasoning is found in the following case:

ORFORD Co-operative Company Ltd. v. the Township of Orford. [1953] O.W.N. 323. (O.M.B., Feb./53)
The subject company carried on a variety of businesses, but the greatest single portion of its net profit, floor-space, inventory, and sales were all connected with its retail business. The court held that the company's preponderating business was that of a retailer, and that its business assessment should be levied accordingly.

Note that in the foregoing case, the business assessment was not split up among the different types of business, but rather levied according to the preponderating business involved. This next case involved a similar approach:

The Robert SIMPSON Co. Ltd. and the Robert Simpson Eastern Ltd. v. the Corporation of the Township of Teck. (O.M.B., Feb./53)
Objections were raised to the levying of a business assessment on a company's premises under the classification of a department store under ss.7(1)(f) [now ss.7(1)(e)] at 50% rather than that of a retail store under ss.7(1)(j) [now 7(1)(k)] at 30%. The court held that the evidence did not show that the assessment as a department store was wrong. The chief or preponderating business of the company was therefore held to be that of a department store, and the business assessment was confirmed.

Another example of this approach is found in the United Trust case discussed earlier with respect to ss.7(1)(b):

Re UNITED Trust Co. et al. and the City of Toronto et al. 11 O.R. (2d) 318; 66 D.L.R. (3d) 60. (H.C.J., June/75)



BUSINESS ASSESSMENT

General

The following cases also discuss ss.7(7):

The Regional Assessment Commissioner, Region No. 13 and the Corporation of the City of Oshawa v. FAMILY Trust Corporation. (C.Ct., Feb./79)
Confirmed by Div. Ct., Jan./80.

REV.

HIKE Metal Products Limited v. the Regional Assessment Commissioner, Region No. 27 et al. (D.Ct., Mar./86)

Re Regional Assessment Commissioner, Region No. 18 et al. and HUDSON'S Bay Co. 42 O.R. (2d) 436. (C.A., June/83)

Fritz SCHULLER v. the Regional Assessment Commissioner, Region No. 16 and the Corporation of the Town of Collingwood. (O.M.B., July/72)

REV.

Regional Assessment Commissioner, Region 14 v. SILTON Ltd. 18 O.M.B.R. 438; 54 O.R. (2d) 282. (Div. Ct., Apr./86)

REV.

UPPER Lakes Shipping Ltd. v. Regional Assessment Commissioner, Region No. 18 et al. (Div. Ct., Feb./85)

s.7. (8) *Where a manufacturer also carries on the business of a retail merchant, he shall be assessed as a retail merchant in respect of any premises or of any portion of any premises that are occupied and used by him solely and only for the purpose of such business.*



BUSINESS ASSESSMENT

General

The main point to be noted concerning ss.7(8) is that it applies only to manufacturers. The following case is instructive:

Re MOLSON'S Brewery (Ontario) Ltd. and Toronto Assessment Commissioners. [1964] 1 O.R. 217; 41 D.L.R. (2d) 604. (H.C.J., Oct./63)

A portion of the premises of a brewery was used as a retail store selling beer directly to the public. The court held that a brewery was not a "manufacturer" within s.7 of the Assessment Act, and that the provisions of ss.7(8) therefore did not apply. The whole of the subject premises was to be assessed under ss.7(1)(b).

BUSINESS
IN RESIDENCE

s.7. (9) *Where any person mentioned in subsection (1), occupies or uses land partly for the purpose of his business and partly for the purpose of a residence, he shall be assessed under this section only in respect of the part occupied mainly for the purpose of his business.*

EXEMPTIONS
FROM
BUSINESS
ASSESSMENT

(10) *No person occupying or using land as a rooming house, apartment house, farm, market garden, nursery or apiary or for the raising of animals for the production of fur is liable to business assessment in respect of such land.*

(a) *In this subsection, "rooming house" means any house or building or portion thereof in which the proprietor supplies lodging, for hire or gain, to other persons with or without meals in rooms furnished by the proprietor with necessary furnishings, and does not include a hotel, as defined in the Hotel Registration of Guests Act.*

As the following summarized cases demonstrate, it is sometimes hard to say whether or not a given enterprise falls within the scope of ss.7(10). The best approach to this problem is usually a very general one: What activity is really being carried on on the land? How can this activity best be described? In broad terms, what does the subject company or business really do? Consider this example:



BUSINESS ASSESSMENT

General

Re EXTENDICARE Ltd. and Borough of North York et al. 27 O.R. (2d) 9; 9 M.P.L.R. 293; 105 D.L.R. (3d) 127. (C.A., Nov./79)
Leave to appeal to S.C.C. refused, Feb./80.
The primary purpose of the subject property was to provide nursing care for its residents. The court held that the property was first and foremost a nursing home; the fact that it was also used to provide lodging did not alter its essential character. The property in question did not fall within the definition in ss.7(10)(a), and therefore the subject company was not exempt from business assessment.

The definition of a "rooming house" as it is extended by ss.7(10)(a) sometimes raises difficulties. The following case dealt with this same issue:

Re Regional Assessment Commissioner, Region No. 11 et al. and ENVIRON Properties Ltd. 14 O.R. (2d) 473. (Div. Ct., Nov./76)
The property in question was being used as a retirement home with certain special medical and recreational facilities for its residents. Although the property was not a "rooming house" in the usual sense, the court held that it fell within the extended definition in ss.7(10)(a) because its main function was to supply lodging and not to provide nursing care, as in the Extendicare case, described above. On that basis, the subject company was exempt from business taxation.

The following case did not deal with ss.7(10) itself, but it did speak to a related issue - whether or not rented lodging is necessarily a business at all:

Thomas R. MAXWELL v. the Corporation of the Township of Stanhope. (O.M.B., Jan./49)
The taxpayer in this case owned two cottages, one of which was rented out during the summer. The court held that the renting of a single cottage did not constitute a business within the meaning of the Assessment Act. The taxpayer was not liable to business assessment.



BUSINESS ASSESSMENT

General

It is not always easy to recognize the distinguishing factors that will determine whether or not ss.7(10) will apply. The problems vary with the different facts of each case, but the underlying issue is the same: What is the preponderating activity of the subject enterprise, and how can that activity best be characterized?

These next cases deal with exemptions from business assessment for nurseries:

The City of London v. WRIGHT Flowers Limited.

[1952] O.R. 457. (C.A., April/52)

The largest portion of the subject company's business consisted of the growth and sale of cut flowers and potted plants. The County Judge concluded as a finding of fact that the preponderating business was that of a wholesale florist, and not that of a market garden or nursery. The Court of Appeal found no reason to alter this decision. The company in question did not fall within the ss.7(10) exemption from business assessment.

Note that in the foregoing case, the issue was one of fact: What was the subject company doing? In this next case, the facts were different:

DALE Estate Limited v. the Town of Brampton.

[1953] O.R. 659. (H.C.J., April/53)

The subject company occupied and used considerable portions of land for raising plants and some livestock. Although the bulk of the company's revenue came from the sale of flowers, the court held that the land was being used as a farm because of the extent of the agricultural activity. The subject property was therefore exempt under ss.7(10).



BUSINESS ASSESSMENT

General

The following case came very close to the line:

ANDY Anderson Greenhouses Ltd. v. City of London.
[1965] 1 O.R. 233. (C.A., Oct./64)

The subject property was used largely for greenhouses in which plants were cultivated for sale to florists. Some cut flowers were sold, but most of the sales consisted of flowering plants. The court held that as long as the company's main activity was the cultivation of plants, it did not matter whether the plants were transplanted or merely sold. The company's business was that of a nursery, and the company was therefore exempt from business assessment.

MINIMUM
BUSINESS
ASSESSMENT

s.7. (11) *Where the amount of the assessment of any person assessable under this section would under the foregoing provisions be less than \$100 he shall be assessed for the sum of \$100.*

1

(1)

(1)



A GUIDE TO THE ASSESSMENT ACT

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SECTION

EASEMENTS

SUBJECT

Effect on Assessment

EASEMENTS

- s.8. (1) *Where an easement is appurtenant to any land, it shall be assessed in connection with and as part of the land at the added value it gives to the land as the dominant tenement, and the assessment of the land that, as the servient tenement, is subject to the easement shall be reduced accordingly.*
- (2) *Where land is laid out and used as a lane and is subject to such rights of way as to prevent any beneficial use of it by the owner, it shall not be assessed separately, but its value shall be apportioned among the various parcels to which the right of way is appurtenant and shall be included in the assessment of such parcels and in such cases the assessor shall return the land so used as "Lane not assessed".*
- (3) *A restrictive covenant running with the land shall be deemed to be an easement within the meaning of this section.*

INTRODUCTION

Section 8 deals with those circumstances in which the ownership of one piece of land brings with it the right to make some use of another piece of land. The owner of a house, for example, may have a right of way that entitles him to cross his neighbour's back yard to reach a garage on the far side. When this sort of situation arises the assessment on the property which is benefitted by the right or "easement" must be increased to allow for the value that the easement adds to that property. The assessment on the property over which the right or "easement" exists must be reduced accordingly. Sometimes "restrictive covenants" exist - agreements that restrict the use of a property for the benefit of the owner of some other parcel of land. The changes in value created by such covenants must also be reflected in the property assessments. The assessments on the lands made more valuable by the covenants must be increased, and the assessments on the lands made less valuable by the covenants must be reduced by a like amount.

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EASEMENTS

Effect on Assessment

EFFECT OF
EASEMENT

The legal rights involved, be they easements or restrictive covenants, must be clear and definitely associated with specific parcels of land before any allowance can be made for them in the property assessments. Consider the following example:

Re LORNE Park Estates Association and the Regional Assessment Commissioner, Region No. 15 and the Corporation of the City of Mississauga. 23 O.R. (2d) 628. (H.C.J., March/79)

A number of homeowners had rights of access to a park. It was argued that these rights constituted restrictive covenants under s. 8, and that the assessment on the park ought to be reduced and the assessments on the relevant homes raised accordingly. The court found that the clauses that granted the rights of access did not define the limits of the land over which the rights extended, that the access was subject to the by-laws of the association that owned the park, and that the association was not acting in a manner consistent with the existence of restrictive covenants. The court therefore held that the legal rights in question, if any, were too vague to qualify as restrictive covenants under s. 8.

Even when a restrictive covenant definitely exists, the relevant assessments need not reflect it if the values of the properties in question are not altered by the covenant in such a way as to make the assessments inequitable under s. 65.

The following case also dealt with the application of s. 8:

REV.

Sydney and Verna Eilenor MOORCROFT v. the Regional Assessment Commissioner, Region No. 3. (O.M.B., March/84)



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SECTION

ASSESSOR'S RIGHT TO INFORMATION

SUBJECT

Access to Property

RIGHT OF ACCESS BY ASSESSOR

s.9.

(1) *An assessor, and any assistant of and designated by an assessor, upon producing proper identification, shall at all reasonable times and upon reasonable request be given free access to all land and to all parts of every building, structure, machinery and fixture erected or placed upon, in, over, under or affixed to the land, for the purpose of making a proper assessment thereof or of making a proper business assessment in respect thereof.*

RIGHT TO INFORMATION

(2) *Every adult person present on land when any person referred to in subsection (1) visits the land in the performance of his duties shall upon request give to such person all the information in his knowledge that will assist such person to make a proper assessment of the land and every building, structure, machinery and fixture erected or placed upon, in, over, under or affixed to the land, to make a proper business assessment in respect thereof, and to obtain the information he requires with respect to any person whose name he is required to enter on the assessment roll or concerning whom he is required to obtain any information for the purpose of the census required by section 14.*

INTRODUCTION

Section 9 of the Assessment Act gives every assessor the right of entry or access to real property for inspection purposes, and the right to request and collect information.

DUTY TO INSPECT

Although Section 9 does provide the assessor with the right to inspect a property for the purposes of making an assessment, it does not place an absolute duty on him to inspect a property to make a valid assessment, as was shown in this next case:

Frank Joseph PROVENZANO and Ferruccio Boschetto v. Corporation of City of Sault Ste. Marie and Regional Assessment Commissioner, Region No. 31.
(D.Ct., June/83)

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ASSESSOR'S RIGHT
TO INFORMATION

Access to Property

The right of access given to an assessor under Section 9 and the obligation placed on the ratepayer to provide access and disclose information under Sections 9 and 10 does not create an absolute duty on the assessor to inspect the property in order to make a valid assessment. The assessor had not made an on-site inspection at the time the assessment was made but the court ruled the assessment was valid because the assessor had accurate information of the property based on inspections and rental information received from the previous owner of the property.

REFUSAL BY
TAXPAYER

A taxpayer who refuses information or who refuses to allow an assessor to gain access to real property must usually have a very good reason for doing so. The taxpayer in the following case had no apparent reason for refusing to allow entry:

Dr. P.K. TAKAHASHI v. the Regional Assessment Commissioner, Region No. 9 and the Corporation of the City of Toronto. (O.M.B., Nov./80)
An appeal was lodged against the assessment on the subject property, but the property owner refused to allow the assessor to inspect the premises. The Board found no evidence on which to grant a successful appeal and confirmed the assessment as it stood.

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SECTION

ASSESSOR'S RIGHT TO INFORMATION

SUBJECT

Questionnaires

- QUESTIONNAIRES s. 10.
- (1) *Where an assessor has visited land for the purpose of making a proper assessment thereof or a proper business assessment in respect thereof and has been unable to obtain all information necessary for such purpose, he may deliver or cause to be delivered or mailed to the address of any person, whether resident in the municipality or not, who is or may be assessed in respect of the land, a questionnaire or questionnaires in writing demanding information as prescribed by the regulations.*
 - (2) *Every person to whom any questionnaire is delivered or mailed shall, within ten days after the delivery or mailing, enter thereon in the proper places all the information required thereby that is within his knowledge and sign and deliver or mail the questionnaires to the assessment commissioner or assessor whose name and address appear on the questionnaire.*
 - (3) *Except as provided in this or any other section of this Act, no person may be required by an assessment commissioner, assessor or other person to furnish information with respect to the assessment of land, business or persons or with respect to the census.*

The following case (discussed earlier in connection with Section 9) deals with the duty of the assessor with respect to the use of information obtained from questionnaires:

Frank Joseph PROVENZANO and Ferruccio Boschetto v. Corporation of City of Sault Ste. Marie and Regional Assessment Commissioner, Region No. 31.
(D.Ct., June/83)

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SECTION

ASSESSOR'S RIGHT TO INFORMATION

SUBJECT

Questionnaires

ASSESSOR s. 11.
NOT BOUND
BY
QUESTIONNAIRES

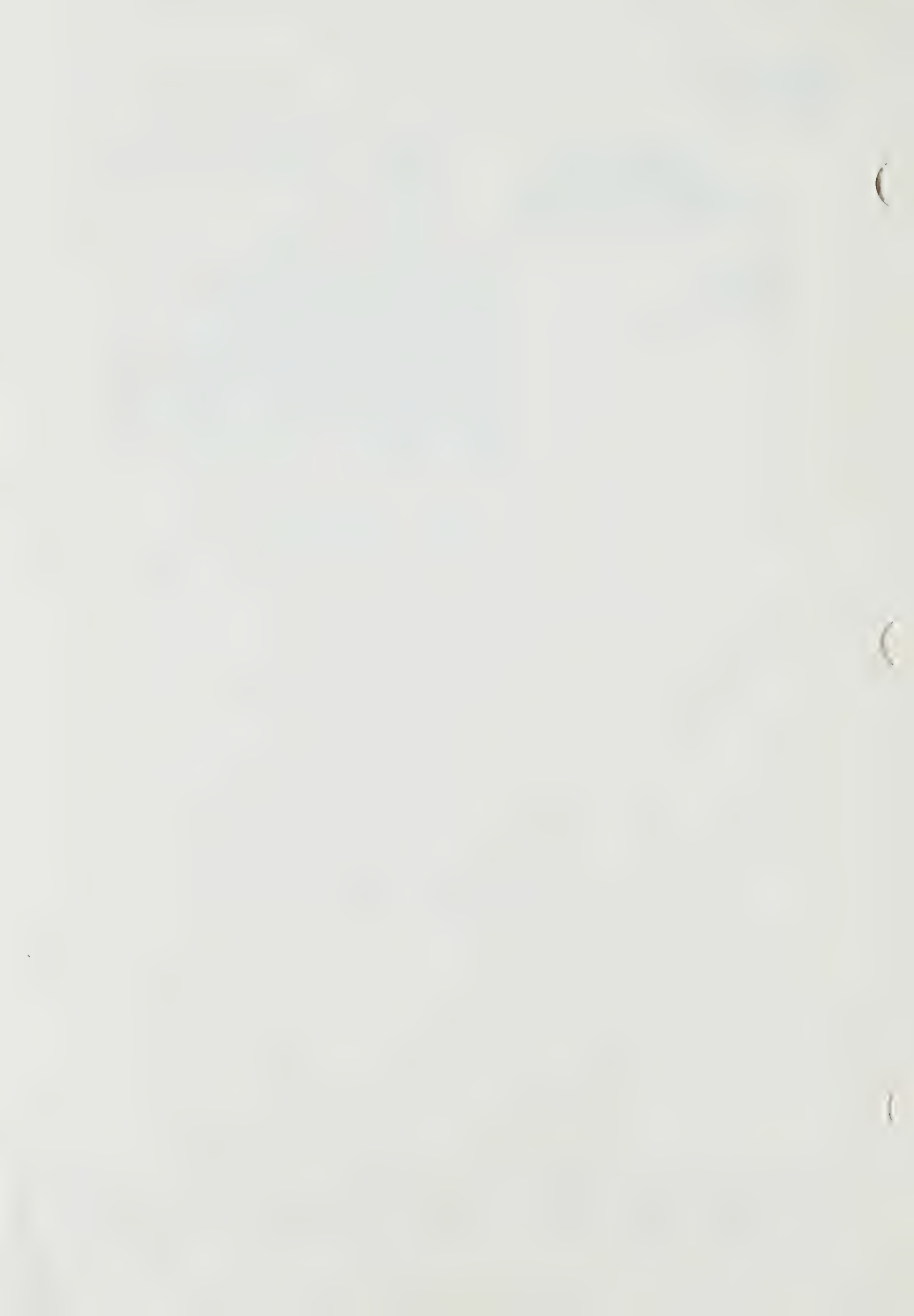
The assessor is not bound by any statement delivered under section 9 or 10 nor does it excuse him from making due inquiry to ascertain its correctness, and, notwithstanding any such statement, the assessor may assess every person for such amount as he believes to be just and correct, and may omit his name or any land that he claims to own or occupy, if the assessor has reason to believe that he is not entitled to be placed on the roll or to be assessed for such land.

No cases or comments.

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SECTION

ASSESSOR'S RIGHT TO INFORMATION

SUBJECT

Questionnaires

REFUSAL TO PROVIDE INFORMATION

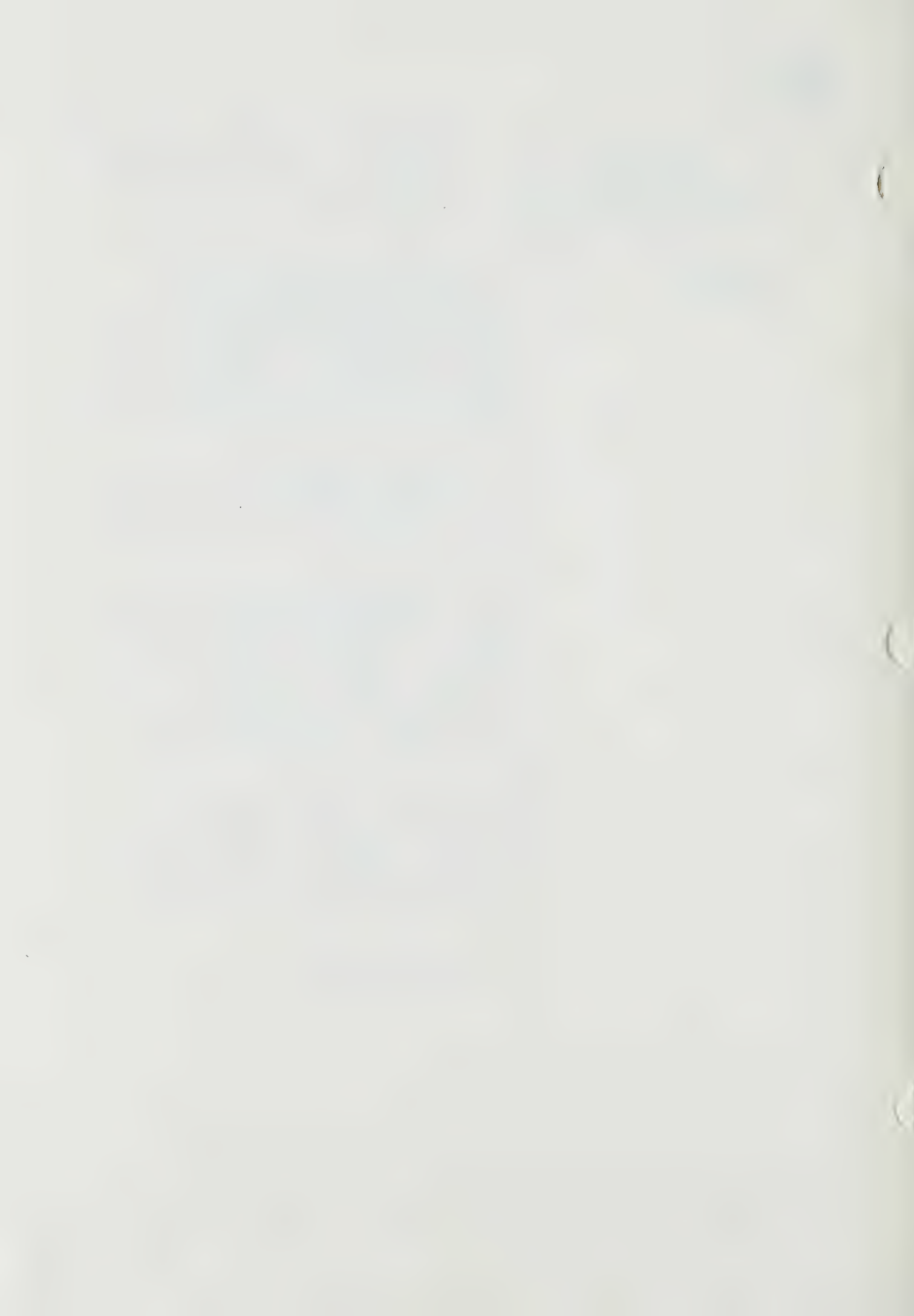
- s. 12. (1) *Every person who, having been required to furnish information under section 9 or 10 makes default in delivering or furnishing it and any corporation that makes default in delivering the statement or notice mentioned in section 24 or 29, is guilty of an offence and on conviction is liable to a fine of not more than \$100 and an additional fine of \$10 for each day during which default continues.*
- (2) *Every person who knowingly states anything false in any such statement or in furnishing such information is guilty of an offence and on conviction is liable to a fine of not more than \$200.*
- (2a) *Every person who has made, or participated in, assented to or acquiesced in the making of, a false or deceptive statement in any application or supporting document required to determine eligibility for exemption from taxation under paragraph 22 of section 3 is guilty of an offence and on conviction is liable to a fine of the amount of the tax that, had the true facts been stated, would have been payable, plus an amount of not less than \$50 and not more than \$500.*
- (3) *Every person who wilfully obstructs or interferes with any person referred to in subsection 9(1) in the performance of any of his duties or the exercise of his rights, powers and privileges under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$200.*

No cases or comments.

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SECTION

ASSESSMENT ROLL

SUBJECT

Content

CONTENTS OF
ASSESSMENT
ROLL

s.13. (1) The assessment commissioner shall cause to be prepared an assessment roll for each municipality in the region for which he is the assessment commissioner and, in such preparation, shall cause to be set down the following particulars:

- 1. A description of the property sufficient to identify it.*
- 2. The name and surnames in full, if they can be ascertained, of all persons who are liable to assessment in the municipality whether they are or are not resident in the municipality.*
- 3. The amount assessable against each person opposite his name and where there is both owner and tenant, both names shall be entered on the roll.*
- 4. Whether the person is an owner or tenant.*
- 5. Number of acres, or other measures showing the extent of the land.*
- 6. Market value of the parcel of land.*
- 7. Amount of taxable land.*
- 8. Value of land if liable for school rates only.*
- 9. Value of land exempt from taxation.*
- 10. Assessment for real property mentioned in subclauses 1(1)(b)(i) and (iii) of the Ontario Unconditional Grants Act.*
- 11. Percentage applied in determining the amount of business assessment under section 7.*

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ASSESSMENT ROLL

Preparation of Roll

12. Residential assessment.
13. Professional and commercial assessment.
14. Manufacturing and industrial assessment.
15. Farm assessment.
17. Religion, if Roman Catholic.
18. Whether a public or separate school supporter, by inserting the letter "p" or "s", as the case may be.

(2) The following provisions shall be observed in the preparation of the assessment roll:

1. No assessment shall be made against the name of any deceased person, but, when the assessor is unable to ascertain the name of the person who should be assessed in lieu of the deceased person, he may enter, instead of such name, the words "Representatives of A.B., deceased" (giving the name of the deceased person).
2. Each subdivision shall be assessed separately, and every parcel of land (whether a whole subdivision or a portion thereof, or the whole or a portion of a building thereon) in the separate occupation of any person shall be separately assessed; provided that no portion of any building used or intended to be used as a residence shall be separately assessed unless it is a domestic establishment of two or more rooms in which the occupants usually sleep and prepare and serve meals.



ASSESSMENT ROLL

Apportionment of multi-
tenanted properties

3. Where a block of vacant land subdivided into lots is owned by the same person, it may be entered on the roll as so many acres of the original block or lot if the numbers and description of the lots into which it is subdivided are also entered on the roll.

APPORTIONMENT
OF MULTI-
TENANTED
PROPERTIES

(3) The value of an assessment of an entire parcel of real property that is occupied by more than one person to be assessed under this Act shall be apportioned on the assessment roll among the occupants of the entire real property who are to be assessed in that proportion that the fair market rent of the space occupied by each occupant bears to the fair market rent of the entire parcel of real property so that the sum of the values apportioned to each occupant shall be equal to the value of the assessment of the entire parcel of real property.

SCHOOL SUPPORT

(4) In the preparation of the assessment roll, the assessment commissioner, in determining the names and school support of those persons entitled to direct taxes for school support purposes, shall be guided by the index books provided for in the Education Act and by the list prepared and revised by him under section 15 of this Act.

INTRODUCTION

Subsection 13(3) of the Assessment Act stipulates the manner in which the assessment on a given parcel of land is to be apportioned among that parcel's occupants. The section has broad significance, not the least of which is the effect it has on business assessments in multiple occupant commercial structures. Apportionment is to be made according to the proportion of fair market rent appropriate to the areas used by the various occupants or tenants.

COMMON
AREAS

Apportionment of assessment on the basis of fair market rent raises issues with respect to common areas. The following case dealt with this issue:

Regional Assessment Commissioner Region No. 7 v. KENT Drugs Ltd. 6 O.M.B.R. 241. (O.M.B., Nov./76)



ASSESSMENT ROLL

Apportionment of multi-
tenanted properties

Objections were raised to the portion of assessment attributed to a commercial tenant in a shopping centre. The assessment apportionment did not exclude common mall areas from the portions, but included them in the tenants' assessments. The court held that even though no exclusive use was made of the common areas, they were being occupied or used for commercial purposes in the broad sense required by the Assessment Act. It was therefore proper to include them in the assessments as apportioned by fair market rent to the various tenants.

Apportionment by fair market rent was also discussed in these next cases:

Re K-MART Canada Ltd. and Regional Assessment Commissioner, Region No. 23 et al. 41 OR. (2d) 55; 22 M.P.L.R. 134. (C.A., March/83)
- summarized in the commentary on ss.63(1)

REV.

HUDSON'S Bay Co. et al. v. Regional Assessment Commissioner, Region 5. 18 O.M.B.R. 72. (O.M.B., April/85)

APPLICATION
TO FARM
PROPERTIES

The Board considered the use of fair market rents to apportion multi-tenanted farm properties in this next case:

REV.

John C. MEDCOF v. the Regional Assessment Commissioner, Region No. 13. (O.M.B., May/86)
The application of ss.13(3) to a farm property with non-farm tenants was rejected on the basis that the apportionment would result in extravagant assessments for the residential tenants.



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SECTION

CENSUS

SUBJECT

CENSUS IN
ELECTION
YEARS

s. 14. (1) *The assessment commissioner shall, commencing on the Tuesday following the first Monday of September and ending on the 30th day of September in each "election year" as defined in the Municipal Elections Act and in any other year in which the Minister considers it necessary, cause a census to be taken of the inhabitants of each municipality and locality in his assessment region, which shall include school support and such other information as may be prescribed by the Minister by regulation.*

CENSUS IN
OTHER YEARS

(2) *The assessment commissioner shall, commencing on the Tuesday following the first Monday of September and ending on the 30th day of September in every year in which a census is not taken under subsection (1), cause a census to be taken of the occupants of any domestic establishment that is,*

a) *used or intended to be used as a residence by a tenant or lessee;*

b) *separately assessed under this Act; and*

c) *contained in a building having not less than seven such domestic establishments.*

(3) *The Minister may by regulation require that, in any part of Ontario where a census under this section is to be taken, the census, instead of being taken during such period provided for in this section, shall be taken during such other period in the year as is specified in the regulation.*

(4) *The census taken under subsection (1) shall be the enumeration referred to in the Municipal Elections Act.*

No cases or comments.

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SECTION

SCHOOL SUPPORT

SUBJECT

SCHOOL
SUPPORT

s.15. (1) The assessment commissioner shall, in each year, prepare a list showing the school support of every inhabitant who is entitled to direct taxes for school support purposes for each municipality or locality in the commissioner's assessment region and shall deliver the list to the clerk of the municipality and to the secretary of each school board in the municipality or the locality on or before the second Tuesday of October in each year.

(2) The list referred to in subsection (1) shall be prepared on the basis of the information contained in any census which has been completed by the assessment commissioner on or before the 30th day of September in that year and on the basis of any other information in respect of school support designation which has come to his notice in that year on or before such date.

(3) The list referred to in subsection (1) shall, immediately after being delivered to the clerk, be open to inspection during office hours in the office of both the assessment commissioner and the clerk.

(4) The Minister may make regulations prescribing the forms and procedures to be used by the assessment commissioner for revision of the list.

CORRECTION
OF SCHOOL
SUPPORT

(5) Subject to subsection (12), a person whose name has not been included in the list or whose name has been included in the list but the information relating to him as set out therein is incorrect, may apply either personally or by his agent authorized in writing to the assessment commissioner for his region before the day fixed for the return of the assessment roll to have his name included in the list or to have such information corrected.

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SCHOOL SUPPORT

- (6) Every person applying under this section for the inclusion or alteration of his school support on the list shall either personally or by his authorized agent complete and sign an application in the form prescribed by the Minister and where the application indicates that the person is a Roman Catholic and a separate school supporter, the assessment commissioner shall accept the application as prima facie evidence for placing the person on the list as a separate school supporter.
- (7) If the assessment commissioner is satisfied that the inclusion or alteration requested in an application made to him under subsection (6) should be made, he shall approve the application by so indicating over his signature on the application.
- (8) Where the assessment commissioner includes or alters the school support of a person who has applied to him under subsection (6), he shall deliver a copy of the approved application to the secretary of each school board in the municipality or locality in which the applicant is entitled to direct taxes for school support.
- (9) Subject to subsection (10), if in the opinion of the assessment commissioner, the statements made by an applicant in his application under this section do not show that the applicant is entitled to have the list amended as requested, he shall inform the applicant in writing that his application is refused, that the school support of the applicant as designated on the list prepared under this section will be confirmed on the notice of assessment to which the applicant is entitled under section 30 and that the applicant may, upon receipt of the notice of assessment, appeal the school support designation as confirmed by the assessment commissioner to the Assessment Review Board under section 39.



SCHOOL SUPPORT

- (10) *Where an application under this section has been received by the assessment commissioner before the day fixed for the return of the roll but has not been considered by him until after the delivery of the notice of assessment provided for in section 30, the assessment commissioner shall, if he refuses such application, inform the applicant in writing that the inclusion or amendment requested in the application is refused and that an appeal may be taken by appealing to the Assessment Review Board the applicant's school support designation as shown on the notice of assessment delivered under section 30 but, where the assessment commissioner approves the application, he shall deliver to the applicant an amended notice of assessment.*
- (11) *Upon determination of all applications for revision of the list for a municipality or locality filed before the day fixed for the return of the assessment roll, the assessment commissioner shall make a final revision of the list to reflect the determination.*
- (12) *The application form referred to in subsection (6) may, no later than fourteen days prior to the day fixed for the return of the roll, be delivered to the office of the clerk of the municipality in which an applicant is entitled to direct taxes for school support rather than to the office of the assessment commissioner and the clerk shall immediately, and in any event not later than the day before the day fixed for the return of the roll, deliver the application to the assessment commissioner.*

No cases or comments.



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SECTION

OWNER'S AND TENANT'S INTERESTS

SUBJECT

OWNER'S AND TENANT'S INTERESTS IN LAND

- s. 16. (1) *Subject to section 17, land shall be assessed against the owner thereof and against the tenant to the extent of the assessed value of the portion of the land occupied by the tenant.*
- (2) *Land held by a trustee, guardian, executor or administrator shall be assessed against him as owner or tenant thereof, as the case may require, in the same manner as if he did not hold the land in a representative capacity, but the fact that he is a trustee, guardian, executor or administrator shall, if known, be stated in the roll, and such trustee, guardian, executor or administrator is only personally liable when and to such extent as he has property as such trustee, guardian, executor or administrator, available for payment of such taxes.*

One principal effect of Section 16 is that the assessor values the property as a single entity. The owner is responsible for the real property taxes. Tenants are also assessed, not for realty tax liability but for:

- direction of school support;
- informing them of the value of the portion that they occupy; and
- in the case of businesses, the basis of business assessment.

The issue of the tenant's interest in land was illustrated in the following case:

WARNICK v. the Township of Sherbrooke. [1956] O.W.N. 713. (C.J., April/56)

A tenant of railway lands had built a cottage on the leased land. The court ruled that the assessment on land and buildings when owned by different persons was no different than when the land and buildings are owned by the same person. The assessor based his assessment on the totality of the interests and was under no obligation to consider the tenancy relationship when assessing the property.

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OWNER'S AND TENANT'S
INTERESTS

The issue of tenants' interests in a shopping centre was discussed in this next case:

Re A. MERKUR & Sons Ltd. and Regional Assessment Commissioner. Region No. 14 et al. 17 O.R. (2d) 339; 7 O.M.B.R. 287. (Div. Ct., Nov./77)
One of the issues in this appeal was the assessment of owners' and tenants' interests in land. Section 1(k) of the Assessment Act defines "land" and makes no distinction between the buildings or fixtures of owners as opposed to tenants. The court examined other pieces of legislation (e.g. the Expropriations Act) where owners' and tenants' interests are separated. Under the Assessment Act, however, no distinction is made between the various interests and the court held that the whole of the land must be valued, not just the owner's interest in the land. In this case, the court stated that the market value of a shopping centre must be determined by taking into account not only the market rents and the owner's expenses, but also the tenants' interests, i.e. tenants' improvements. (NOTE: The Court of Appeal (Oct./78) overturned the decision of the Divisional Court on another issue in this appeal - see Section 18(1),(2). However, the Divisional Court's ruling on tenants' interests is often cited.)



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SECTION

CROWN LANDS

SUBJECT

Provisions for Assessment

ASSESSMENT OF CROWN LAND

s.17. (1) *Notwithstanding paragraph 1 of section 3, the tenant of land owned by the Crown where rent or any valuable consideration is paid in respect of such land and the owner of land in which the Crown has an interest and the tenant of such land where rent or any valuable consideration is paid in respect of such land shall be assessed in respect of the land in the same way as if the land was owned or the interest of the Crown was held by any other person.*

(a) *For the purposes of this subsection,*

- (i) *"tenant", in addition to its meaning under section 1, also includes any person who uses land belonging to the Crown as, or for the purposes of, or in connection with, his residence, irrespective of the relationship between him and the Crown with respect to such use,*
- (ii) *"residence" means a building or part of a building used as a domestic establishment and consisting of two or more rooms in which persons usually sleep and prepare and serve meals,*
- (iii) *"rent or any valuable consideration" shall be deemed to have been paid, in the case of an employee using land belonging to the Crown as a residence, where there is a reduction in or deduction from the salary, wages, allowances or emoluments of the employee because of such use or where such use is taken into consideration in determining the employee's salary, wages, allowances or emoluments.*

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CROWN LANDS

Crown Tenancy

REV.

(2) Repealed.

(3) *This section does not apply to the interest of a timber licensee, lessee, grantee or concessionaire in a licence, lease or agreement issued under the Crown Timber Act, or to any right in timber cut or to be cut by the holder of, or party to, such licence, lease or agreement, or to such improvements or equipment as lumber camps, tote roads, telephone lines, hoists, logging railways, dams or booms that may be used only temporarily in connection with logging or lumbering operations conducted under such licence, lease or agreement.*

TENANCY ON
CROWN LAND

Taxation may be levied in respect of Crown land under s. 17, but only under certain circumstances. One situation that is commonly called into question with respect to s. 17 is whether or not a given person is a tenant on Crown land and can receive an assessment on that basis. Related problems have been discussed earlier in this Guide, notably with respect to the definition of "tenant" under s. 1(s). The following case appeared in the commentary to ss.7(1) and ss.7(1)(f):

Re DELTA Parking Systems Ltd. and the Township of Toronto. 48 D.L.R. (2d) 130; [1965] 1 O.R. 380. (H.C.J., Nov./64)

A company was employed by the Crown to provide parking services at an airport. The Crown maintained strict control over the operation, received all revenue generated, and paid the company a fee. The court held that the company was merely providing management services. The Crown and not the subject company was actually occupying the premises; therefore, no assessment could be levied against the company with respect to the property.



CROWN LANDS

Rent or Valuable Consideration

This next case dealt with a number of issues, one of which was the question of tenancy on Crown land:

MAPLE Leaf Services v. Townships of Essa and Petawawa. 37 D.L.R. (2d) 657; [1963] 1 O.R. 475. (C.A., Feb./63)

A non-profit corporation created to provide certain services for Army personnel arranged to pay nominal rent for its space on Crown land. The corporation was under Army control and the court held that under these circumstances no tenancy arrangement existed. No assessment could be levied under s. 17 with respect to the premises.

One of the issues in this next case was discussed earlier under section 3, paragraph 9. A second issue dealt with tenancy on Crown land:

The City of DETROIT v. the Corporation of the Township of Sandwich West. 10 D.L.R. (3d) 391. (S.C.C., March/70)

The City of Detroit leased land from the Crown. The court held that a municipality outside the Province of Ontario was not a "municipality" within the meaning of the Assessment Act, and was thus a tenant of the Crown, therefore liable to assessment under ss.17(1).

RENT OR
VALUABLE
CONSIDERATION

Rent or consideration of some form is one of the factors required for liability to assessment under s. 17. This next case dealt more directly with the idea of what constitutes "rent":

Re COURT House Theatre Holding Foundation and Town of Niagara-on-the-Lake. 6 O.R. (2d) 168. (H.C.J., Oct./74)

Certain Crown lands had been leased to a non-profit corporation for \$100 per year. The court found that a rental figure that represented the property's value would have been many times larger than \$100. In these circumstances, the court held that \$100 was a nominal figure, and that the property was not liable to assessment under s. 17.



CROWN LANDS

Rent or Valuable Consideration

The reasoning in the foregoing case should not be taken to indicate that an occupant of Crown lands is always exempt from taxation merely because his or her rent is low. The "rent or any valuable consideration" mentioned in s. 17 can take many forms, as long as something of value passes from the tenant to the landlord. Consider the following example:

The Corporation of the City of THUNDER Bay v. Regional Assessment Commissioner, Region No. 32 and the Minister of Government Services. (D.Ct., July/81)

A developer rented certain Crown lands for 30 years at a rate of \$1 per year. The developer agreed to erect and maintain a building on the land and later agreed to sublet the building back to the Crown. The court held that the value of the building itself together with the value of the rights of sublease constituted "valuable consideration", and that the interest in the property was liable to assessment under s. 17.

The following case referred to in Section 1(k) also speaks to the issue of liability under s. 17:

ONTARIO-Minnesota Pulp and Paper Co. Ltd. v. Township of Atikokan. [1963] 1 O.R. 169. (H.C.J., Dec./62)

TIMBER
LICENCES

The following case (also discussed under s. 1(k)) dealt with the limits of ss.17(3), which exempts the interest of a timber licensee from the overall provisions of s. 17:

GREAT Lakes Paper Company Limited v. the Regional Assessment Commissioner, Region No. 32. (D.Ct., Feb./85)

The holder of a timber licence covering some 9,000 square miles objected when an assessment was made on 43 acres being used as a logging camp. The court held that the 43 acres were indeed part of the interest of the timber licensee and therefore exempt, but that the buildings in the camp had such a level of permanence as not to be "temporarily" used, within the context of ss.17(3). The camp structures were therefore assessable and taxable.

REV.



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VALUATION PRINCIPLES

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MARKET VALUE

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Introduction

MARKET
VALUE*s. 18. (1) Subject to this section, land shall be
assessed at its market value.**(2) Subject to subsection (3), the market value of
land assessed is the amount that the land might
be expected to realize if sold in the open
market by a willing seller to a willing buyer.*

INTRODUCTION

Section 18 is crucial; it lays down the basis for determining what the assessed value of property in Ontario should be. Land is to be assessed at its market value. [Assessment practice in Ontario differs from the law as expressed in s. 18 in that the assessment levels do not reflect up-to-date market values. Instead, assessments reflect market price levels that date back a number of years. This is because of the provisions of s. 62 and ss.63(1)].

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Market value is described as the price that a given property would bring on the open market if sold by a willing seller to a willing buyer.

One or more of three traditional valuation methods are applied to arrive at this figure:

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1. Comparing the sale prices of similar properties.
2. Estimating the cost of replacing the subject property with a similar property.
3. Calculating the current capital value of the market income of the property.

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MARKET VALUE

SUBJECT

Introduction

In practice, market value is not always easy to establish, and many court cases have arisen as a result. The reasoning in this next case has been widely followed:

Montreal v. SUN Life Assurance Co. of Canada.
[1952] 2 D.L.R. 81. (P.C., Nov./51)

The subject property was a large, ornate office building. The court held that the ideal approach for determining the assessed value would be that of ascertaining what price the property would bring on the market if sold by a willing seller to a willing buyer. Five sources were listed from which an estimate of value could be drawn:

1. A recent free market sale of the subject property,
2. Recent sales of identical nearby properties,
3. Recent sales of comparable properties,
4. The market value of the subject property's revenue producing possibilities,
5. The depreciated replacement cost of the subject property.

In this case, the property was unique and not suitable for sale. The rental income of the building and the theoretical cost of replacing the property with another could therefore be considered, but always with the object of producing an estimate of market value. Thus, when calculating the replacement cost of the structure in question, a reduction had to be made from the actual construction cost to allow for the excessively elaborate nature of the building. A lower figure, representing the cost of a structure of equal market value but less elaborate design and materials, more accurately reflected the price that the subject property would have commanded on the open market if sold by a willing seller to a willing buyer.



MARKET VALUE

Introduction

The following case is also important with respect to the application of subsection 18(1):

Re EMPIRE Realty Co. Ltd. and Assessment Commissioner for Metropolitan Toronto et al.
[1968] 2 O.R. 388; 69 D.L.R. (2d) 387.
(C.A., May/68)

The subject property was a large "prestige" office building that had been assessed according to a system that established the value of what the building would have cost if it had existed in 1940. The court held that because the assessment did not relate to market value, there was an intermediate onus on the assessor to prove that the assessment was fair and equitable when compared to the assessments on similar properties in the vicinity. No such proof had been submitted; therefore, the assessment had to be altered.

This next case dealt with the same basic point - that when an assessment does not relate to market value, the onus is on the assessor to prove that the assessment is fair:

The Regional Assessment Commissioner, Region No. 2 et al. v. ONTARIO Steel Products Co. Limited. 61 D.L.R. (3d) 468. (S.C.C., June/75)
The assessment on the subject property did not relate to market value. The court held that when the assessment did not relate to market value the onus was on the assessor to prove that the assessment was equitable when compared with the assessments on similar properties in the vicinity. The evidence that the assessor presented did not relate to market value, and did not satisfy the onus of proof.

Related issues will be discussed later in the commentary to s. 65. Note that the "replacement cost method" of assessment - that is, estimating the cost of replacing the subject property with another property of similar utility - may be an entirely appropriate way of arriving at "actual" or "market" value. The replacement cost method was held to be acceptable in the following case partly because no accurate sales data could be used to confirm the subject property's value on an open market:



MARKET VALUE

Introduction

The Regional Assessment Commissioner, Region No. 14 v. OFFICE Specialty Ltd. and the Township of East Gwillimbury. 49 D.L.R. (3d) 471; [1975] 1 S.C.R. 677; 2 N.R. 612. (S.C.C., Oct./74)

The subject property was a building situated in a location entirely suitable for the purposes for which it was being used, but undesirable to any foreseeable purchaser. The value of this property on the open market was therefore hard to establish. The court held, however, that the owner could be viewed as a possible purchaser. An assessment made by calculating the cost of replacing the property with another was entirely suitable in that it produced a reasonable estimate of the "actual" value of the property, which was equivalent to its "market" value.

Further analysis of the concept of market value will be approached in this section of the Guide by examining the application of market value assessment principles to specific types of properties. Bear in mind that the facts of each individual case are necessarily very influential in the courts' reasoning, and that these facts vary widely.



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Vacant Land

VACANT LAND

The problems concerning the market value assessment of vacant land usually relate to peculiarities of a specific location, perhaps variations in zoning, or in the availability of servicing. The next case is one such example:

The Regional Assessment Commissioner, Region No. 21 v. EMIRATE Developments Limited. (O.M.B., April/81)

The subject property was a piece of vacant land purchased for the purpose of development. The market value of the property was determined from sales of similar properties in the vicinity. Even though the purchase price of the property under appeal supported this sales data, the appellant argued that the high cost of servicing the property should be removed from the sale price to arrive at an indication of value. The Board noted that the price paid for the property was comparable with the prices paid for similar properties in the vicinity, and held that a purchaser would have considered the cost of servicing in determining his purchase price. No reduction to allow for servicing costs was allowed.

Note the emphasis on real estate market data in the above case. The following case shows a similar emphasis, but has an unusual result. The appellant company was able to convince the O.M.B. that the price the company itself had paid for the property was not a true indicator of market value.

REV.

CANADIAN Tire Corporation v. Regional Assessment Commissioner, Region No. 20. (O.M.B., July/84)
The subject land had been purchased for commercial redevelopment that had not in fact taken place, and the owner objected to an assessment based on the purchase price. The court concluded that zoning and servicing problems would prevent immediate redevelopment. The purchase price was considerably above the property's market value, and the assessment was therefore reduced to reflect the true market value of the property.

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MARKET VALUE

Vacant Land

The "market value" at which property is to be assessed is the open real estate market value, not a figure taken from one particular transaction, or circumstances peculiar to one owner or tenant. Consider the following case:

REV.

The Regional Assessment Commissioner, Region No. 19 v. FOURTH Phase Civic Square. 17 O.M.B.R. 83. (O.M.B., Feb./85)

A tenant with an 85-year lease to a vacant parcel of land argued that the property's value was reduced by lease terms that limited development of the property. The Board decided that "market value" would have to be established as though the land were on the open market, free of encumbrances. The assessment was fixed according to the open market data presented by both parties to the appeal.

Large parcels of land present different valuation problems as shown in this next case:

Regional Assessment Commissioner, Region No. 7 v. HALIBURTON Forest and Wildlife Reserve. (O.M.B., March/83)

The property in question consisted of approximately 48,000 acres and was used for recreational purposes including camping, hunting, fishing and snowmobiling. In establishing the value of the property, consideration had been given to the acreage, percentage of water frontage, lake size, type of shoreline, terrain, and accessibility. The Board confirmed the assessment on the basis that all similar large parcels of land in the municipalities had been valued in the same manner.



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Vacant Land

The following cases also dealt with the assessment of very large parcels of land:

REV.

CANADA Mortgage and Housing Corporation v. the Regional Assessment Commissioner, Region No. 3. (O.M.B., Nov./85) - Residential/commercial land split by municipal boundary

The TADENAC Club Limited et al. v. the Regional Assessment Commissioner, Region No. 17. (O.M.B., June/83) - Private fishing preserve owning title to water lots

The following cases also speak to the assessment of vacant land:

Ronald BLUESTEIN and Victor Prousky v. Regional Assessment Commissioner, Region No. 6 and Corporation of the Township of Percy. (O.M.B., Feb./79) - Checkerboarded land

Regional Assessment Commissioner, Region No. 22 v. BRADSIL Limited. (O.M.B., Dec./82)
- Vacant industrial land

REV.

Regional Assessment Commissioner, Region No. 3 v. CENTRAL Precast Products. (O.M.B., May/86)
- Industrial park land

GEORGE Wimpey Canada Limited v. Regional Assessment Commissioner, Region No. 20. (O.M.B., Feb./83) - Vacant subdivision lots

REV.

JACK Pearse Limited v. Regional Assessment Commissioner, Region No. 17. (O.M.B., July/83 and O.M.B., Feb./86 - 18 O.M.B.R. 376) - Summer camp

Jack and Florence STORM v. Regional Assessment Commissioner, Region No. 7 and the Corporation of the Town of Lindsay. (O.M.B., March/83)
- Vacant commercial lots

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Residential Properties

RESIDENTIAL PROPERTIES

Information concerning the actual sale prices of residential homes is usually readily available to assist in the determining of market value. Exceptions do arise, however, as the following case shows:

Re Alexander and Bernice FORTNEY and the Regional Assessment Commissioner, Region No. 25 and the Township of Bentinck. (O.M.B., Mar./79)
The subject property was a superior quality home in a rural area. The owner objected to the property assessment on the grounds that the assessment was too high compared to assessments on similar properties in the vicinity. The cost method had been used to arrive at the assessment on the subject property and comparable properties. The Board held that the cost valuation of the subject property and the comparable properties had been handled properly. The subject assessment was reduced, however, to allow for a locational obsolescence which had been applied to nearby properties.

The reasoning in this next case dealt with another aspect of this same sort of problem:

REV.

Patricia Ann CLARIDGE v. the Regional Assessment Commissioner, Region No. 20. (O.M.B., Sept./84)
The appellant homeowner complained that the assessment on her property was higher than that on any similar property in the vicinity. In response, it was pointed out that the subject property was larger than any of the nearby homes, and also had more amenities in the form of air conditioning, basement finish, etc. The Board decided that these qualities explained the higher estimate of market value, and confirmed the assessment as it was.

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Residential Properties

The following appeal emphasizes the need to consider overall market data, and not to rely on one sale price as a final indicator of market value:

Edward and Christine ENGEL v. the Corporation of the Township of Pickering. (O.M.B., Sept./71)
A homeowner argued that his property assessment was too high, relying heavily in his argument on the low price he had actually paid for his house. The Board hesitated to rely on one sale price, preferring instead a broad range of real estate market data that showed the assessment to be basically correct.

REV.

The following cases also discussed market value in relation to residential properties:

REV.

1019 LAWSON Road et al. v. Regional Assessment Commissioner, Region No. 23. (O.M.B., Dec./85)

REV.

Curtis POMEROY et al. v. Regional Assessment Commissioner No. 7. (O.M.B., Mar./87)

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Multi-Residential Properties

MULTIPLE RESIDENCES

The assessment of multiple residential properties such as high-rise apartment buildings is more complex than the assessment of simple residential homes. These properties are built to generate rental income for their owners. Analysis of the capital value of a given amount of rental income therefore becomes the usual assessment technique when one is dealing with multiple residential properties. One such technique involves the comparison of the ratios of assessed values to market values for similar multiple residential properties, in order to determine whether or not the assessments are fair and equitable. Note the next example:

The Regional Assessment Commissioner, Region No. 11 v. SEAVIEW Apartments (Toronto) Ltd. (O.M.B., Jan./83)

The determination of the appropriate approach to valuing a multi-residential property was the basis of this appeal. The Board held that establishing market value estimates based on the use of gross income was acceptable. In addition, the O.M.B. found that a comparison of ratios representing the relationship between assessed values and market values for similar multi-residential properties was suitable for demonstrating equity.

Other cases dealing with the technique of comparing assessed values to market values follow:

MERIDIAN Building Group Ltd. v. Regional Assessment Commissioner, Region No. 12. (O.M.B., May/83)

The Regional Assessment Commissioner, Region No. 11 v. 335947 ONTARIO Limited. (O.M.B., Feb./83)

The Regional Assessment Commissioner, Region No. 21 v. 398706 ONTARIO Limited. (O.M.B., Oct./81)

In establishing the values of multi-residential properties, the issue has arisen as to whether actual rents or economic rents are applicable. Economic rents or fair market rents can be described as the typical rents which can be expected for similar units in similar buildings in the vicinity. In the case which follows, the Ontario Municipal Board states its view on this matter:

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MARKET VALUE

Multi-Residential Properties

The Regional Assessment Commissioner, Region No.21 v. 418037 ONTARIO Limited and the Corporation of the City of Kitchener. (O.M.B., Dec./80)

The owner of an apartment building claimed that actual rents were preferable to the use of fair market rents in developing market value estimates. The Board held that fair market rents should be used rather than actual rents because in the words of the Board:

"Actual rents can depart from fair market rents for a number of reasons and if they do, they will not assist in determining the true market value of the building. Apart from that, the assessor has used "fair market rent" throughout in his reassessment of Kitchener's apartment buildings and to start now to use actual rent for the subject property would, in my view, amount to mixing apples and oranges which does not lead to equity."

The original assessment was confirmed.

The analysis of apartment income is sometimes complicated by the involvement of Government grants in the rent structure of multiple residential units. Consider this next example:

The Corporation of the City of Kitchener v. BURGUNDY Court (Kitchener) Limited. (O.M.B., Nov./62)

The ratepayer argued that the assessment on certain properties should be reduced because rents charged for the units in question were controlled under the National Housing Act. The Board held, however, that assessment under the Assessment Act concerned physical real property, and that an agreement entered into by the property owner with the Government which restricted the rents of his property was not the assessor's concern and did not justify a reduced assessment. The assessment was confirmed.

The following case also speaks to this same issue:

The Regional Assessment Commissioner, Region No. 21 v. LITTLE Five Limited. (O.M.B., Feb./83)

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MARKET VALUE

Multi-Residential Properties

This appeal dealt with a multi-residential row housing development, that was built under an agreement with C.M.H.C. Rents were subsidized by C.M.H.C., resulting in the actual rents being lower than market rents for similar properties in the area. The issue in this appeal dealt with the assessor's use of fair market rents as opposed to actual rents. In the words of the Board:

"The choice of fair market rental and not actual rents in particular circumstances has been accepted by this Board and the courts as being the fairest method of achieving equity in these circumstances. Actual rents embody too many variables to assume equity, and it is wrong to base the assessment only on the actual rent paid, even on the strength of evidence that properties such as this are bought and sold on that basis."

The original assessment was confirmed.

Fair market rents, like actual rents, can cover a range of value depending on building quality, location, etc. In this next appeal, the important question was where the subject property ought to be placed within this range:

REV.

CJM Blommestyn Construction Ltd. v. the Regional Assessment Commissioner, Region No. 5. (O.M.B., Feb./85)

The assessment on two apartment buildings had been based on fair market rents comparable to those used to assess a high quality apartment complex nearby. The Board considered the relative quality of various comparable buildings, and concluded that a lower level of fair market rent associated with other, lower-quality buildings would be more appropriate in calculating the subject assessments. A reduction in assessed value was therefore ordered.



MARKET VALUE

Multi-Residential Properties

The following cases also dealt with the assessment of multiple residential properties:

CARDINAL Plaza Limited et al. v. the Regional Assessment Commissioner, Region No. 19 et al. 49 O.R. (2d) 161; 17 O.M.B.R. 69. (C.A., Dec./84)
- Economic v. actual rent

METROPOLITAN Trust Company et al. v. the Regional Assessment Commissioner, Region No. 11 and the Corporation of the Borough of East York. 13 O.M.B.R. 242. (O.M.B., Oct./80) - Medium and high rise buildings

REV.

Regional Assessment Commissioner, Region No. 3 v. 457293 ONTARIO Limited. (O.M.B., April/86)
- Economic v. actual rents

REV.

Regional Assessment Commissioner, Region No. 18 v. Lester SHOALTS. (O.M.B., June/85) - Luxury high-rise

REV.

Donald K. STEEVES, et al. v. Regional Assessment Commissioner, Region No. 26. (O.M.B., March/85)
- Classification within economic rent tables

Regional Assessment Commissioner, Region No. 19 v. TIFFANY Hill Apartments Ltd. (O.M.B., April/83) - High-rise building

REV.

Clovis TOURIGNY et al. v. the Regional Assessment Commissioner, Region No. 3. (O.M.B., June/86)
- Classification within economic rent tables



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Commercial Properties

SHOPPING CENTRES

Note again the three traditional methods of real property assessment:

1. Sale price comparison
2. Estimate of replacement cost
3. Calculation of current capital value of market income of the property.

This last method, commonly called "income capitalization", is often the most reliable one to use when one is dealing with shopping centres. Note that the concern is with current market income - that is, the current rent that a property of a certain type would command on the open market. The rent that a given property actually generates may or may not be an accurate indicator of the current market rent.

This point was discussed in these next two cases:

Re The STEVENS Building Ltd. and the Corporation of the City of Sudbury. (C.A., May/73)
The court held that "in adopting the income approach to valuation, the income of the property must be calculated on the basis of the current market rent for comparable premises at the time that the assessment is made".

An excellent discussion of the income valuation approach is found in this next case at the O.M.B. level:

A. MERKUR & Sons Ltd. v. Regional Assessment Commissioner, Region No. 14. 6 O.M.B.R. 1. (O.M.B., April/76)
Div. Ct. (Nov./77; 7 O.M.B.R. 287; 17 O.R. (2d) 339) recommended the appeal be returned to O.M.B. for consideration.
Overtaken by C.A., confirmed the O.M.B. decision. (Oct./78; 9 O.M.B.R. 158; 21 O.R. (2d) 797).

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MARKET VALUE

Commercial Properties

Objections were raised on the assessment of a shopping centre on the grounds that a capitalization of the rents actually being paid on the property yielded a lower value. The Ontario Municipal Board concluded that "actual rents ought to be considered insofar as they reflect" current market conditions and that the assessor was correct to project economic rents where the existing lease did not do so. The Board held that the market rent had been properly considered by the assessor, and the resultant assessment was fair and equitable.

The Divisional Court overturned the decision of the Ontario Municipal Board and directed that it consider the current market rents of the property in setting its assessment.

The Court of Appeal overruled the Divisional Court, holding that the Ontario Municipal Board had correctly found the current market rents of the property in reaching its decision. It held that capitalization rates and market value determinations are determinations of fact not law. The Court of Appeal held that the Board's findings were findings of fact and that the Divisional Court had no jurisdiction to over-ride those findings.

The following case dealt with the same issue, but in a situation where a recent arms-length sale of the property had taken place, resulting in a different outcome by the court:

REV.

Re Regional Assessment Commissioner, Region No.11 and NESSE Holdings Ltd. et al. 54 O.R. (2d) 437; 18 O.M.B.R. 404. (C.A., Feb./86)
Leave to appeal to S.C.C. refused - Sept./86.
Objections were raised when the O.M.B. fixed the assessment on the subject shopping centre at a figure based largely on a recent arm's length sale of the property. The Court held that the Board's finding was proper, regardless of evidence that the sale was based on actual rent which was significantly below market rent.



MARKET VALUE

Commercial Properties

The following cases also speak to issues associated with the assessment of shopping centres:

CAPITAL City Shopping Centre Limited and Dylex Limited (Billingsbridge) v. the Regional Assessment Commissioner, Region No. 3 et al. (O.M.B., Nov./82 and June/83)
Confirmed by Div. Ct., Aug./83. - Regional shopping centre

REV.

G.W. Robinson Co. Ltd. et al. v. the Regional Assessment Commissioner, Region No. 21. (O.M.B., Oct./85) - Regional shopping centre

OWL Realty Ltd. v. Regional Assessment Commissioner, Region No. 13 and The Corporation of the Township of Pickering. (O.M.B., Sept./72)
- Small plaza

REV.

RIVER Realty Development Limited v. the Regional Assessment Commissioner, Region No. 23. (O.M.B., Sept./86) - Open strip plaza

OFFICE
BUILDINGS
AND MIXED
USE
PROPERTIES

The assessment of some of the larger office and mixed use commercial properties can be a very difficult undertaking due to the sheer size and complexity of the properties involved. A large mixed use property comprising office, retail, restaurant and parking areas may be unique for its area, making comparative sales data unreliable. The cost of replacing the property may be arguable due to variants in building quality or construction technique, and the income generated by the building may be hard to analyze. It is worth remembering, however, that these three approaches - the comparative sales, cost, and income methods - remain the foundation techniques of mass appraisal. In the following case, an assessment based mainly on the replacement cost method was held by the court to be sound:

CONTINENTAL Insurance Co. et al. v. Regional Assessment Commissioner, Region No. 9 et al. 9 O.M.B.R. 401. (Div. Ct., May/79)

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Commercial Properties

The subject property was a high-quality office and retail building. Because of its unique suitability to its specific purposes, it was not readily marketable. The court, following the reasoning in the Office Specialty case (discussed earlier), held that an assessment based on an estimate of the cost of the building was not an error in law or an improper application of the provisions of the Act.

The following cases have also accepted the cost approach in the assessment of office buildings:

REV.

CO-OPERATORS Insurance Associates v. Regional Assessment Commissioner, Region No. 25. (O.M.B., May/83)

REV.

447051 ONTARIO Ltd. et al. v. the Regional Assessment Commissioner, Region No. 30. (O.M.B., Mar./86)

ORMEDENT Limited v. B.J. Fraser, Regional Assessment Commissioner, Region No. 16 and the Corporation of the City Of Orillia. 2 O.M.B.R. 262. (O.M.B., May/73)

Income capitalization often plays a large part in the assessment of office and mixed use properties. The income approach can be very effective, but a great deal of sophisticated knowledge may be necessary to determine the rate at which the market rent of a property can be "capitalized" or translated into the building's actual value. The following cases discuss the application of the income approach in the assessment of office and mixed use properties:

REV.

Regional Assessment Commissioner, Region No. 9 and 12 v. JANE Bloor Holdings Ltd. (O.M.B., May/83)

MARATHON Realty Company Limited v. the Regional Assessment Commissioner, Region No. 7 and the Corporation of the City of Peterborough. (Div. Ct., Oct./79)

REV.

SHIU Pong Enterprises (Canada) Limited v. the Regional Assessment Commissioner, Region No. 9. (O.M.B., Sept./83)



MARKET VALUE

Commercial Properties

HOTELS

The assessment of hotels is often approached by choosing whichever of the three basic approaches to valuation (comparative sales, cost, and income) is applicable in the circumstances.

It is important in these cases to remember that the end goal is always a fair and equitable assessment. The taxpayer in the following case used comparative sales figures to show that the assessment on the subject property was too high:

FOXHEAD Inn Limited v. Regional Assessment Commissioner, Region No. 18 and the Corporation of the City of Niagara Falls. 6 O.M.B.R. 348. (O.M.B., Jan./77)

The property in question had been assessed by the replacement cost method. The owner of the property used the sale prices of similar properties in the vicinity to show that the assessment was unfairly high. The Board found no reason to limit its considerations to the replacement cost method and held that the assessment in question should be reduced.

The replacement cost method was accepted in this next case:

REV.

HOTEL Toronto v. Regional Assessment Commissioner, Region No. 9 et al. 11 O.M.B.R. 170. (O.M.B., May/80)

The subject hotel, and two similar hotels in the vicinity, had been assessed using the cost approach. The court rejected the appellant's application of the income approach based on a rate of return per room, even though that method indicated a higher assessment relative to the two similar hotels. The assessment was confirmed.

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Commercial Properties

REV.

The following cases also speak to issues related to the assessment of hotels:

Regional Assessment Commissioner, Region No. 19 v. COMMONWEALTH Holiday Inns of Canada Limited.
(O.M.B., Mar./87)

KITTAR Hotels Limited v. the District Assessor for the District of Cochrane. (D.J., May/70)

O'DELL v. Watson. [1954] O.W.N. 7. (O.M.B., Jan./54)

The SENATOR Hotels Limited v. the Regional Assessment Commissioner, Region No. 29 and the Corporation of the City of Timmins. (O.M.B., Dec./78)

Regional Assessment Commissioner, Region No. 9 v. VILLACENTRES Management Limited et al. (Hotel Plaza II). (O.M.B., Mar./83)

NURSING
HOMES

The assessment of commercial nursing homes, like that of other types of property, usually comes down to an application of one of the three basic methods of valuation - the comparative sales, cost, or income methods. Analysis of market income is often a favoured approach with respect to commercial properties.

The Court of Appeal addressed the application of the income valuation method to nursing homes in the following case:

REV.

Re RESTFULCARE Inc. and Regional Assessment Commissioner, Region No. 23 et al. 53 O.R. (2d) 673. (C.A., Feb./86)

The owner of a nursing home argued that an assessment based on the income approach should be reduced by deducting the value of the nursing home licence, claiming that it was personal property and not part of the assessable land. The court held that because the licence was not transferrable it had no separately quantifiable value and should be considered as part of the market value of the land. The valuation of the subject property's income had been done correctly and the assessment was allowed to stand.

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Reliable income data is not always available, in which case another valuation method must be used. Note this example:

ALGONQUIN Nursing Home Ltd. v. the Regional Assessment Commissioner and the Town of Mattawa.
(D.J., Oct./78)

The owner of a nursing home tried to argue that the assessment on the property should be set by the "income approach" to market value, but the court found that the relevant income information was not reliable. An assessment based on the estimated replacement cost of the nursing home was therefore confirmed.

The following decision is also of interest:

KOMOKA Nursing Homes Ltd. v. the Regional Assessment Commissioner, Region No. 23. 17
M.P.L.R. 289. (C.J., Feb./82)

RACE TRACKS

Race tracks exemplify a different problem in assessment - the amounts of land involved are large, but the land is used for unique purposes. Land can have a certain value when purchased and used for one purpose, but depending on its zoning, its resale value may be quite different if other potential uses are considered. The Supreme Court of Canada touched on this problem in the Ontario Jockey Club case, which has already been mentioned under ss.7(1):

Toronto v. ONTARIO Jockey Club. [1934] 2
D.L.R. 254. (S.C.C., Feb./34)

Race-track lands were assessed at their resale value, i.e., their potential value as a subdivision. The Supreme Court held that this approach was the correct one, in that it reflected the market value of the subject lands. However, under these circumstances the buildings were assessable only at their demolition value because they would in fact be demolished if the lands were sold.



MARKET VALUE

Commercial Properties

Property tends to be sold for the highest price available, which in turn reflects the best and most economically efficient use of the land. The market value of a given piece of real property, therefore, is usually the price that would be paid for that piece of land by someone who intended to put it to its highest and best use. In the foregoing case, race-track land was most valuable not as a race-track but as subdivision land. The land would therefore have been sold as subdivision land if it were sold at all, and the assessment had to reflect the higher value.

Two other cases which discussed the valuation of race tracks are:

REV.

ONTARIO Jockey Club v. Regional Assessment
Commissioner, Region No. 18. (O.M.B., Jan./85)

Township of Gloucester v. RIDEAU Carleton Raceway.
8 O.M.B.R. 301. (O.M.B., June/78)

GOLF COURSES

Golf courses are another type of commercial property that presents different valuation problems. The value of a golf course is based on the value of the land as though that land was vacant, agricultural or recreational, as shown in this next case:

DERRYDALE Golf Course Ltd. v. Regional Assessment
Commissioner, Region No. 15 and the City of
Mississauga. 6 O.M.B.R. 259. (O.M.B.,
Dec./76)

A golf course had been assessed by determining the replacement cost of the land as vacant land, and then adding to this figure the cost of the improvements: greens, watering systems, etc. The owner of the golf course complained that the assessment resulted in taxes that made the golf course unprofitable, but he failed to show that this method of assessment resulted in an unrealistic or unfair estimate of market value. The court therefore held the existing assessment to be correct.



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The end goal is always an equitably distributed tax base. In the following case, the cost approach was used:

CAMBRIDGE Golf Course Inc. v. the Regional Assessment Commissioner, Region No. 21 and the Township of North Dumfries. (O.M.B., Jan./81)
A golf course owner objected to an assessment based entirely on replacement cost. The Board found that the cost approach had been used uniformly on all golf course assessments in the region. No inequity of assessment had been shown; therefore, except for a minor adjustment for a residential portion, the assessment was confirmed.

These following cases also speak to problems associated with the assessment of golf courses:

Re BRAMPTON Golf Club Ltd. and the Corporation of the Town of Mississauga. [1972] 2 O.R. 816; 26 D.L.R. (3d) 695. (C.A., April/72)

REV.

BRIARS Golf and Country Club Ltd. v. the Regional Assessment Commissioner, Region No. 14. (O.M.B., July/84)

BURLINGTON Golf and Country Club Ltd. v. the Regional Assessment Commissioner, Region No. 15 and the Corporation of the City of Burlington. (O.M.B., July/80)

Regional Assessment Commissioner, Region No. 27 and the Corporation of the Township of Anderdon v. CANARD Valley Estates Ltd. (O.M.B., Dec./79)



MARKET VALUE

Commercial Properties

BILLBOARDS



Billboards create their own special set of assessment problems. They are usually affixed to buildings or other real property and are therefore assessable as "land" (see definition of "land" in ss.1(k)). Billboard owners typically rent the space on rooftops, parking lots, etc. for the placement of the billboards. The question is not only how much a billboard is worth, but also how much the rented space is worth. The O.M.B. dealt with the methodology of assessing billboards and billboard space in the following case:

The Regional Assessment Commissioner, Region No. 19 and No. 3 v. MEDIACOM Inc. (O.M.B., April/84)
A billboard owner agreed that the billboards themselves should be assessed by calculating the replacement cost and giving a blanket reduction for depreciation. The owner objected, however, to any assessment associated with the rent paid for the use of the lands and buildings on which the billboards were placed. The O.M.B. held that the rental income added value to the land and that this value increase could be calculated by capitalizing the fair market rent paid for the billboard space. The total of the depreciated replacement cost of the billboards plus the capitalized rental income yielded the market value assessment on which the billboard owners' business assessment could be based.



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Industrial Properties

USE OF COST APPROACH

Real estate used for industrial purposes often comprises unique structures suited to special purposes. The assessment of such properties is often difficult and complex; the very uniqueness of the properties makes any generalizations about the cases concerning them risky. An approach that applies handily to an industrial mall may not work at all on an automobile plant. With that warning made, it can be stated in broad terms that the replacement cost method is heavily relied upon in the assessment of industrial properties. Many types of factories and warehouses are rarely sold under open market conditions, a fact that makes the comparative sales approach unreliable. Many of these properties are owner-occupied, and therefore the technique of estimating value by analyzing rental income may be inappropriate. It is usually possible, however, to make some sort of estimate of the cost of replacing a given property with another property of similar utility, and for this reason the replacement cost method is often used. Note again the Office Specialty case mentioned earlier in the commentary on s. 18. This next case also exemplifies a situation in which the cost approach was held to be the appropriate method of assessment:

The Regional Assessment Commissioner, Region No. 21 v. B.F. Goodrich Canada Ltd. (O.M.B., May/81)
The subject property was a tire manufacturing plant. The Board examined evidence relating to sales and income data, and held that this information was not useful because the properties to which it related were not comparable with the subject property. The Board held that the cost approach was the only practical method available and that it could be relied on.

Where there are comparable properties in the vicinity, the courts will compare their assessments to the property assessment under appeal to see if the assessment is equitable. In this next case, the Ontario Municipal Board compared the assessments of similar properties, all of which had been assessed using the cost approach:

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GABRIEL Canada Limited v. Regional Assessment Commissioner, Region No. 12. (O.M.B., May/83)
The property under appeal was a vehicular shock absorber manufacturing plant. The ratepayer compared the assessment to assessments of newer, tenant-occupied mall type properties. The assessor had applied the cost manual to the subject property and to properties of similar age, structure and use. The Board held that the properties used by the assessor as comparables were similar to the subject property and that the cost approach had been correctly applied to the properties. The tenant-occupied mall properties were held not to be comparable to the older owner-occupied properties. In this case, the Board increased the assessment of the subject property because the assessor showed that the property was under-assessed in comparison to the similar properties.

The use of the cost approach was also held to be appropriate in this next case:

461706 ONTARIO Incorporated v. the Regional Assessment Commissioner, Region No. 30. (O.M.B., May/83)

A tennis/racquet club was valued using the cost approach. The same method of valuation had also been used for other similar industrial buildings in the municipality, that is for buildings of similar construction but not similar use. The Board confirmed the assessment.

The following cases also deal with the application of the cost approach for valuing industrial properties:

REV.

COLLINGWOOD Industrial Properties Incorporated v. the Regional Assessment Commissioner, Region Number 16. (O.M.B., Oct./84) - Cement block warehouse

GILBEY Canada Limited v. Regional Assessment Commissioner, Region No. 12. (O.M.B., Jan./83)
- Distillery

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HORTON CBI Ltd. v. Regional Assessment

Commissioner, Region No. 18 et al. 19 O.M.B.R. 174; 32 M.P.L.R. 36. (Div. Ct., March/86)
Leave to appeal to C.A. refused, April/86
- Application of cost manual to large industrial buildings [Case summarized in the commentary on ss.65(1)].

The Regional Assessment Commissioner, Region No. 10 v. KOHL and Frisch Limited. (O.M.B., March/83)
- Steel frame warehouse

NIAGARA Structural Steel Company Limited v. Regional Assessment Commissioner, Region No. 18. (O.M.B., Dec./82) - Steel frame building

REV.

ONEIDA Canada Limited v. the Regional Assessment Commissioner, Region No. 18. (O.M.B., July/86 and Sept./86) - Modern steel frame building

The Regional Assessment Commissioner, Region No. 11 v. PHILIPS Electronics Ltd. (O.M.B., Dec./80)
- High quality industrial complex

DEPRECIATION
AND
OBSOLESCENCE

Numerous problems are associated with the cost approach. One problem concerns depreciation and obsolescence. An old building is usually worth less than a new one, but it is not always easy to establish the amount that should be allowed for the drop in value. Consider the following example:

DAY & Campbell Limited v. the Regional Assessment Commissioner, Region No. 19 and the Corporation of the City of Hamilton. (O.M.B., Dec./80)
The owner of a manufacturing plant questioned the allowance made for depreciation in the assessment on the plant's buildings. The evidence showed that some of the buildings required extensive repair. The Board held that the allowance for depreciation should be increased, resulting in a lower assessment.

Changes of use can render some structures obsolete, as this next case shows:

LEAMINGTON Distributors Limited v. the Regional Assessment Commissioner, Region No. 27, and the Corporation of the Town of Leamington. 7 O.M.B.R. 78. (O.M.B., June/77)

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Industrial Properties

The subject property was well suited for the storage and processing of tobacco, but the building was no longer used for that purpose. The property was therefore obsolete to a considerable extent from its original purpose and design. The Board examined sales data relating to similar industrial properties, and concluded that the assessment on the subject property was too high. A reduction was made to allow for the subject property's obsolescence.

Note that in the foregoing case, sales data was held to be relevant in determining the amount to be allowed for obsolescence. This approach is frequently used. Where sales have occurred for similar properties in the vicinity, the sales data is used to determine the allowances for depreciation and obsolescence. Thus, industrial property may be valued using the cost approach but the allowance for depreciation or obsolescence may be determined from sales information. The following case represents an unusual example:

REV.

James A. SHALVOY v. the Regional Assessment Commissioner, Region No. 28. (O.M.B., Aug./83)
The owner of an industrial building argued that his assessment should be lowered to allow for age, location, and lack of appropriate amenities. The argument was supported both by the price originally paid for the property and by the fact that a long-standing resale effort had been totally unsuccessful. The Board agreed, and ordered a re-calculation of the assessment at a lower rate.

As this next case demonstrates, there are limits to the application of arguments concerning building obsolescence:



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REV.

CANADIAN General Electric Company Limited v. the
Regional Assessment Commissioner, Region No. 11.
(O.M.B., Jan./85)

A heavy manufacturing plant was sold for uses other than those for which it was designed, and the former owner therefore argued that the assessments dating back for three years before this sale ought to have been based on the value of the plant when put to alternative uses. The Board examined data concerning comparable properties, and concluded that the possibility of future alternative use was not an appropriate factor to consider with respect to the immediate property assessment. The subject assessment was found to be equitable for the years in which it was returned, and was allowed to stand at the original figure.

The following cases also deal with the problem of obsolescence:

REV.

GATES Canada Inc. v. Regional Assessment
Commissioner, Region No. 20. (O.M.B., Nov./84)

REV.

Regional Assessment Commissioner, Region No. 18 v.
HAYES Dana Inc. (O.M.B., Jan./85)

REV.

PETROSAR Limited v. the Regional Assessment
Commissioner, Region No. 26. (O.M.B., Sept./83)

UNITED Income Properties Ltd. v. the Regional
Assessment Commissioner, Region No. 11. (O.M.B.,
Jan./86)

WESTINGHOUSE Canada Incorporated v. Regional
Assessment Commissioner, Region No. 19. (O.M.B.,
Feb./83)

Confirmed by Div. Ct., April/85; 17 O.M.B.R. 266.

PITS AND
QUARRIES

On the subject of obsolescence, however, certain properties present a very thorny problem in that the very use to which they are put causes the value of the properties to decline. Consider the following example:



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The Regional Assessment Commissioner, Region No. 13 v. John and William HARMER. 13 O.M.B.R. 60. (O.M.B., April/81)

The property in question was a quarry. The Board held that because the quarry was substantially "worked out" or empty of useable gravel, the value of the quarry had been reduced, and the assessment had to be reduced accordingly.

This next case also concerned a quarry, but it touched on a subject already mentioned in connection with nursing homes - namely, the value of licences:

The Regional Assessment Commissioner, Region No. 18 v. QUEENSTON Quarries, A Division of Steetley Industries Ltd. (O.M.B., March/82)

One of the arguments raised in this case was that the assessment on the subject quarry should be reduced to allow for that portion of the quarry's value that related to licences and not to the value of the real property itself. The Board rejected this idea. The Board ordered that the assessment should be made so as to reflect the different values attributable to the various portions of land that were actively being worked, or that were worked out, or that were merely vacant.

The following cases also speak to issues related to the assessment of industrial property:

The Corporation of the Town of Bracebridge v. CORNING Glass Works of Canada Ltd. (O.M.B., April/75) - Excess industrial land

The Regional Assessment Commissioner, Region No. 19 v. GLENDALE Spinning Mills. (O.M.B., June/81)
- appealed to Div. Ct., Jan./83 - remitted to O.M.B., April/83 - assessment confirmed - Use of comparative sales approach not reliable

The Town of Bracebridge v. ROCKWELL International of Canada Ltd. (D.J., Dec./74) - Excess industrial land

The Regional Assessment Commissioner, Region No. 21 v. SHELLER Globe of Canada Ltd. (O.M.B., Aug./81) - Use of comparative sales approach not reliable



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Special Properties

SPECIAL PROPERTIES

REV.

Certain properties create problems in assessment because they are special or unique. An unusual building structure may require highly specialized analysis of replacement costs and possible functional obsolescence. The aim is always equity (see again the "Introduction" portion of this commentary on s. 18). Unusual use of a property may give rise to questions concerning the basis for assessment but the assessor is obligated to assess a property as it stands. Consider the following example:

SPECIAL Ability Riding Institute v. the Regional Assessment Commissioner, Region No. 23. (O.M.B., July/84)

The subject property had been granted to a non-profit organization, but only so long as the land was used as a riding facility for the handicapped. The organization argued that since the land could not be sold under these terms, it had no market value and ought to be assessed at a nil amount. The O.M.B. ruled that to order a "nil" assessment would be in effect to exempt the property from assessment and taxation, which was beyond the power of the Board to do. The assessment as it stood was found to be equitable in terms of open market sale value, and so was confirmed.

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Nuisance Factors and
Environmental Hazards

NUISANCE FACTORS AND ENVIRON- MENTAL HAZARDS

Nuisance factors and environmental hazards frequently present problems in property assessment. Property owners who find themselves facing such problems as noise, traffic or pollution often argue that the value of their properties has been reduced and that the assessments should be reduced accordingly. The courts will only reduce assessments if it can be shown that the nuisance factors cause definite, demonstrable reductions in property value. The following case is typical:

The Regional Assessment Commissioner, Region No. 27 v. Anthony S. BRECHKOW. (O.M.B., Oct./80)
The homeowner argued that the assessment on his property should be reduced because of traffic and aircraft noise. The Board allowed a reduction for traffic noise because a reduction was being given to nearby properties. Analysis of sales data failed to disclose any identifiable reduction in housing values due to aircraft noise in the vicinity, and the Board therefore held that no reduction was justified on that ground.

In the next appeal, the "nuisance" was the possibility of flooding. Note that the main concern, however, was the property value.

REV.

Douglas GOWAN et al. v. the Regional Assessment Commissioner, Region No. 18. (O.M.B., Dec./84)
Property owners argued that a regulation that established a flooding and flood fringe line on their properties had created a public perception that had reduced their property values. The Board examined comparative sales data and found no evidence of reduced resale value. The assessments were therefore fixed at the original levels.

REV.

The following cases also considered the impact of a "nuisance" factor on property values:

Bart COTTER and 43 others v. the Regional Assessment Commissioner, Region No. 12. (O.M.B., Oct./85) - Allowance for aircraft noise denied; allowance for pedestrian walkway granted

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Nuisance Factors and
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94 OAKMEADOW Boulevard and 5 others v. the
Regional Assessment Commissioner, Region No. 11.
(O.M.B., July/85) - Allowance for basement
flooding granted

REV.

John and Louise OLSEN and 31 others v. the
Regional Assessment Commissioner, Region No. 27.
(O.M.B., April/85) - Allowance for aircraft
noise granted

REV.

Andrej and Darinka PLUT and 5 others v. Regional
Assessment Commissioner, Region No. 15. (O.M.B.,
May/85) - Allowance for traffic noise where
concrete barrier installed denied

The following case deals with the question of the
stigma left on a property by the use of Urea
Formaldehyde Foam Insulation (U.F.F.I.):

REV.

The Regional Assessment Commissioner, Region No. 9
v. 292 SPADINA Road et al. (O.M.B., July/85)
A number of owners of houses that had been
insulated with U.F.F.I. argued in favour of an
assessment reduction on the basis that the stigma
of U.F.F.I. insulation depressed the price of
their homes even though the U.F.F.I. had been
removed. The Board examined sales evidence and
found no indication that U.F.F.I., once removed,
left a decrease in value such as to cause an
inevitability of assessment with respect to
similar real property in the vicinity. With the
exception of the assessment on one property that
still had some U.F.F.I., the assessments were
therefore fixed at their original level.



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Farm Land

FARM LAND

- s. 18. (3) For the purposes of subsection (2), in ascertaining the market value of farm lands used only for farm purposes by the owner thereof or used only for farm purposes by a tenant of such an owner and buildings thereon used solely for farm purposes, including the residence of the owner or tenant and of his employees and their families on the farm lands, consideration shall be given to the market value of such lands and buildings for farming purposes only, and in determining such market value consideration shall not be given to sales of lands and buildings to persons whose principal occupation is other than farming.*
- (4) Where the owner of farm lands entitled to the benefit of subsection (3) dies or retires, the market value of the lands and buildings in respect of which subsection (3) applies shall be ascertained in the manner provided in subsection (3) in assessing such lands during the period the lands are held by him after his retirement or held by his estate after his death, but in no case beyond the two years immediately following the owner's death or retirement unless such lands are occupied by the surviving spouse of the deceased owner or by the retired owner.*
- (5) When an appeal has been taken in respect of the assessment of farm lands mentioned in subsection (3) from the decision of the Assessment Review Board, the assessment as finally determined on appeal shall remain fixed in respect of the same lands and buildings for a period of two years after the year in respect of which such appeal was taken so long as the lands and buildings are owned by a person whose principal occupation is farming, but this subsection does not apply to prevent a different assessment of any farm lands in any year in which a different assessment generally is made of lands in the municipality in which the farm lands are situated.*

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Farm Land

- (6) *Land that has been planted for forestation or reforestation purposes shall not be assessed at a greater value by reason only of such planting.*
- (7) *Land used as woodlands or orchards shall not be assessed at a greater value by reason of the presence of the trees thereon nor shall it be assessed at a lesser value by reason of the removal of the trees.*
- (8) *In subsection (7), "woodlands" means lands having not less than 400 trees per acre of all sizes, or 300 trees measuring over two inches in diameter, or 200 trees measuring over five inches in diameter, or 100 trees measuring over eight inches in diameter (all such measurements to be taken at four and one-half feet from the ground) of one or more of the following kinds: white or Norway pine, white or Norway spruce, hemlock, tamarack, oak, ash, elm, hickory, basswood, tulip (white wood), black cherry, walnut, butternut, chestnut, hard maple, soft maple, cedar, sycamore, beech, black locust, or catalpa, or any other variety that may be designated by order in council, and which lands have been set apart by the owner with the object chiefly, but not necessarily solely, of fostering the growth of the trees thereon and that are fenced and not used for grazing purposes.*
- (9) *In subsection (7), "orchards" means lands having an area of at least one-half acre on which there are at least thirteen fruit trees and on which the number of fruit trees bears a proportion to the area of at least twenty-six fruit trees per acre, of one or more of the following kinds: apple, cherry, grape vine, peach, apricot, pear, plum, and such other fruit-producing trees, shrubs or vines as may be designated by order in council.*



MARKET VALUE

Farm Land

INTRODUCTION Subsections (3) to (9) of section 18 relate specifically to the assessment of farms, woodlands, and orchards. Woodlands and orchards are not to be assessed at a higher value by reason only of the presence of the trees on the land. Farms are generally to be assessed at their value as farms, and not at their potential resale value for shopping plazas or subdivisions. The task of determining the value of a given piece of farm land as farm land is usually approached through an analysis of soil samples and locational factors. The question that remains is "What exactly are farm lands?". The courts have tried to maintain a straightforward approach to this problem: "farm lands" are lands being used for farming. Consider the following example:

Re County Assessor for Ontario County and RUNNYMEDE Investment Corporation Ltd. [1966] 1 O.R. 577; 54 D.L.R. (2d) 410. (C.A., Nov./65)
An investment company acquired vacant lands for speculative purposes. The company farmed the lands and the court therefore held that in accordance with ss.18(3) the lands should be assessed at a level comparable with other farm lands in the vicinity. The price that the company itself had paid for the lands was not relevant to the assessable value of the subject property because it was the use to which the land was put that counted, not, in this instance, the principal occupation of the owner.

Properties that qualify as farm lands receive special treatment under subsection 18(3), in that they are to be assessed only for their value as farm lands. The speculative value the real property may have for other purposes is to be discounted, as the following case shows:

Cyril CLARK v. the Regional Assessment Commissioner for Region No. 15 and the Corporation of the Township of Chinguacousy. (O.M.B., April/70)

The court rejected the assessment on certain farmlands because the market sales analysis used to produce the assessment included the influence of land speculation on farm sale prices. The court held that the assessment on the farm lands should be based on land productivity only, exclusive of speculative factors.



MARKET VALUE

Farm Land

If the assessment on a farm property is fairly established, it should be comparable to the assessments on similar farms in the vicinity. The idea of comparability will be discussed later in this Guide with respect to s. 65. On the subject of farms, however, some factors do legitimately destroy the comparability between different farm properties. Consider this next case:

DEBELLEN Investments Ltd. v. Town of Markham and Regional Assessment Commissioner, Region No. 14.
23 O.R. (2d) 307; 9 O.M.B.R. 25. (Div. Ct., Oct./78)

The subject lands were restricted in their use by regulations made under the Parkway Belt Planning and Development Act. The court held that sales of lands outside the scope of these regulations ought not to have been considered with respect to the setting of the assessment on the subject property, because lands of restricted use and lands of unrestricted use could not be compared without justification. The court also held that sales of properties to the Crown ought not to have been considered without examining the circumstances of each sale to ascertain its market nature. The Court referred the matter back to the O.M.B. for the final determination of assessment (O.M.B., May/81).

The idea of the limits of the concept of "farming" was discussed in a case before the Ontario Municipal Board:

The Regional Assessment Commissioner, Region No. 10 and the Corporation of the City of North York v. WHITESTONE Realty Limited. (O.M.B., June/82)

A land developer argued that a piece of property was being used for farming, but the evidence before the Board gave little indication of any tenancy arrangement or of any farming activity other than some plowing. Rejecting the idea that the land was being used for farm purposes, the Board stated that:

"It would make a mockery of the statute to indicate that a developer might avoid the intent of the legislature ... by the simple act of running a plow through a rough field."



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Farm Land

The following case also addresses this issue:

Re Regional Assessment Commissioner, Region No. 22 and MAJOR Holdings and Developments Ltd. et al. 21 M.P.L.R. 281. (O.M.B., Jan./83)
Soil tests had been performed by a farmer on land that had been subdivided for industrial uses but no other farming activities such as ploughing or the planting of crops had taken place because of the time of year. However, farming activities were carried out in the next year. The Board held that the acts that had been done were the commencement of a farming operation and assessed the lands as farm lands under ss.18(3).

Note also that the wording of ss.18(3) refers to lands used only for farm purposes, and buildings used solely for farm purposes. The limitations imposed by this wording were important in the next appeal:

REV.

Gordon R. BAGSHAW v. the Regional Assessment Commissioner, Region No. 13. 19 O.M.B.R. 362. (O.M.B., April/86)

The appellant argued that since he was a retired farmer, his lands should not have been assessed on the basis of partly commercial and partly residential use. The Board decided that since the appellant was operating a welding shop on the property, the lands were not being used solely for farm purposes as was required by ss.18(3). The assessment was held to be basically correct.

This idea works both ways, however, in that portions of land are not to be removed from the ambit of ss.18(3) solely because their contribution to the overall farming process is slight. Consider this next example:

REV.

ROBERT McConnell Estate v. Regional Assessment Commissioner, Region No. 13. (O.M.B., Sept./84)
Cattle farmers objected to the assessment of a portion of rough, wooded land as "residential recreational" property. The Board found that the presence of the woodland prevented soil erosion and helped maintain the water table and therefore the land was entitled to treatment as farm land under ss.18(3).



MARKET VALUE

SUBJECT

Farm Land

The following case dealt with the question of "vicinity" as it relates to the assessment of farm land:

HOLLAND Marsh Decision - Gary Rupke and Louis Devald v. Regional Assessment Commissioner, Region No. 14. (O.M.B., Feb./86)

A farmer used market value and soil class comparisons with farms across a municipal boundary to support his argument that his farm was over-assessed. The Board noted that all of the farms were in a unique farming area, that both municipalities had in fact been re-assessed at market value, and thus that the subject farm and the nearby farms were all in the same vicinity for the purposes of assessment analysis. An assessment reduction was ordered.

SMALL
HOLDINGS

The limits of the concept of "farming" is an issue on small parcels of land as well as large ones. If the land is being used for the purposes of farming, then it is a farm, regardless of its size. The following case provides one example of this idea:

VLOET v. the Township of Canborough. [1956] O.W.N. 401. (C.J., March/56)

The subject property comprised only seven acres of land, but the occupant was raising crops on the land and living on the proceeds. The court held that the land was being used for farm purposes, and therefore should be assessed as farm land.

An extension of this idea can be found in this next case:

KNOWLES, Charles Ronald v. the Regional Assessment Commissioner, Region No. 25 and the Corporation of the Township of St. Vincent. 7 O.M.B.R. 434. (O.M.B., Jan./78)

The owner of a 12.3 acre parcel of land had planted 1 2/3 acres in grape vines as an experimental beginning to what he hoped would become a 6 acre vineyard. The court held that although the undertaking was risky it was a genuine farming venture, and that the whole of the subject land was to be assessed as farm land.



MARKET VALUE

Farm Land

The taxpayer in the foregoing case was able to convince the court that he really was farming and not just indulging in a hobby. At some point, however, the courts must decide that a given undertaking is far enough removed from ordinary farm activity to be outside the concept of "farming". Ordinary vegetable gardens and flower beds, for example, obviously do not qualify.

TREE FARMS

It is also difficult for a taxpayer to convince a court that tree-covered land is being used for farm purposes, as the following case demonstrates:

The Corporation of the Township of Innisfil v. Christie CLARK. (O.M.B., Aug./64)
The subject property was covered with trees. The court held that the circumstances indicated that the land was used as a country estate, and not as a farm. The undeveloped nature of the land, however, induced the court to fix the assessment at a lower level than nearby cottage properties.

This idea is important in that it reflects on properties commonly referred to as "tree farms". Note this next decision:

Clara LLOYD and Bruce Lloyd v. the Regional Assessment Commissioner, Region No. 25 and the Corporation of the Township of Osprey. (O.M.B., Sept./76)
Confirmed by Div. Ct., May/79.
Trees had been planted on the subject property. The owners maintained the forest by the process of thinning, fire protection, insect control and fencing, with the intention of harvesting the trees at maturity. On behalf of the appellant, expert witnesses provided evidence to show that the planting and harvesting of trees is similar to the planting and harvesting of any crop, with the only difference being that more time is required. The Board held that the land was a "tree farm" but was not land used under ss. 18(3) for farm purposes. The Assessment Act differentiates between farm land and woodlands and the Board held that the legislation did not intend to provide the same measure of protection from taxation to woodlands as is provided to farm lands.



MARKET VALUE

Farm Land

The following cases also speak to issues associated with subsections (3) to (9) of Section 18. The cases are listed under topics related to different farm assessment problems.

BUSH LAND

GIBSON, Dyanne B. v. the Regional Assessment Commissioner, Region No. 25 and the Corporation of the Township of Euphrasia. (O.M.B., June/75)

REV.

Patricia and Joseph KRAEMER et al. v. the Regional Assessment Commissioner, Region No. 13. (O.M.B., Feb./85)

The Regional Assessment Commissioner, Region No. 13 v. Margaret MCCONNELL et al. 12 O.M.B.R. 212. (O.M.B., Jan./81)

MULLIN, H. Alexander v. Regional Assessment Commissioner, Region No. 25 and the Corporation of the Township of Glenelg. (O.M.B., June/76)

FARM RESIDENCE

Estate of Mary L. BASKIN v. the Regional Assessment Commissioner, Region No. 3. (O.M.B., Feb./84)

CRYDERMAN, Eric and Constance v. the Regional Assessment Commissioner, Region No. 14 and the Corporation of the Town of East Gwillimbury. 9 O.M.B.R. 365. (O.M.B., Sept./78)

REV.

Donald POSLUNS v. the Regional Assessment Commissioner, Region No. 25. 18 O.M.B.R. 468. (O.M.B., June/86)

ROBERTS, David v. the Regional Assessment Commissioner, Region No. 19 and the Corporation of the Township of Glanbrook. 6 O.M.B.R. 396. (O.M.B., Mar./77)

HOBBY FARM

Regional Assessment Commissioner, Region No. 19 v. ALLISON et al. 12 O.M.B.R. 121. (O.M.B., Oct./80)



MARKET VALUE

Farm Land

MENDELS, Dr. Leonard and Dorothy v. Assessment
Commissioner of the Region of York. (C.J.,
May/72)

LAND DESIGNATED FOR NON-AGRICULTURAL USE

BORINS, S.D. et al. v. the Regional Assessment
Commissioner, Region No. 14. (C.J., Dec./77)

The Regional Assessment Commissioner, Region No.
25 v. DELKAP Estates Limited et al. 8 O.M.B.R.
485. (O.M.B., April/78)

The Regional Assessment Commissioner, Region No. 5
v. SARGENT, Alma. (O.M.B., Aug./71)

The Corporation of the Town of Oakville v.
SHERIDAN Hills Developments Limited. 1 O.M.B.R.
529. (O.M.B., Nov./72)

REV.

STEINNAGEL, Arno and Gwyneth v. the Regional
Assessment Commissioner, Region No. 19. (O.M.B.,
Dec./84)

STERNBAUER, Philip v. the Regional Assessment
Commissioner, Region No. 27 and the Corporation
of the Township of Sandwich South. (O.M.B.,
Nov./71)

WASSERMAN, Marvin J. v. the Regional Assessment
Commissioner, Region No. 19 and the Corporation
of the City of Hamilton. (O.M.B., May/81)

SMALL HOLDINGS

Walter BOSE v. Regional Assessment Commissioner,
Region No. 13. (C.J., Nov./76)

The Regional Assessment Commissioner for Region
No. 6 v. Richard P. FUKU and Eleanor B. Fuku.
4 O.M.B.R. 30. (O.M.B., Sept./74)

The Regional Assessment Commissioner, Region No.
14 v. Harvey and Betty MASHINTER. (C.J.,
Sept./77)

REV.

Regional Assessment Commissioner, Region No. 31 v.
Matti PACKALEN. (O.M.B., May/86)



MARKET VALUE

Farm Land

B.G. STEWART v. the Regional Assessment
Commissioner, Region No. 14 and the Corporation of
the Township of King. (O.M.B., Jan./79)

TREE FARM

REV.

HARDY Island et al. v. Regional Assessment
Commissioner, Region No. 6. (O.M.B., May/85)
- Christmas tree farm

HASSARD, R.J. and Hassard, M.A. v. the Regional
Assessment Commissioner, Region No. 14 and the
Corporation of the Town of Vaughan. (O.M.B.,
Oct./79)

Douglas C. MATTHEWS v. the Regional Assessment
Commissioner, Region No. 25 and the Corporation
of the Township of Holland. (O.M.B., Sept./76)

SCHWANDT, Rudolf and Irmgard v. the Regional
Assessment Commissioner, Region No. 18, and the
Corporation of the Township of Caistor. (C.J.,
Feb./69) - Christmas tree farm

Re WALKER and the Township of Uxbridge et al.
31 O.R. (2d) 269; 118 D.L.R. (3d) 690; 13
M.P.L.R. 196. (H.C.J., Dec./80)
Dismissed by Div. Ct., Sept./83; 15 O.M.B.R.
307.



A GUIDE TO THE ASSESSMENT ACT

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SECTION

MINERAL LANDS

SUBJECT

Liability to Assessment

MINERAL LANDS

- s. 19. (1) *Every person occupying mineral land for the purpose of any business other than mining is liable to business assessment as provided by section 7.*
- (2) *Where in any deed or conveyance of lands heretofore or hereafter made, the petroleum mineral rights in the lands have been or are reserved to the grantor, such mineral rights shall be assessed at their market value.*
- (3) *Where any estate in mines, minerals or mining rights has heretofore or may hereafter become severed from the estate in the surface rights of the same lands, whether by means of the original patent or lease from the Crown, or by any act of the patentee or lessee, his heirs, executors, administrators, successors or assigns, such estates after being so severed shall thereafter be and remain for all purposes of taxation and assessment separate estates notwithstanding the circumstances that the titles to such estates may thereafter be or become vested in one owner.*

No cases or comments.

DATE

November, 1987

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SECTION

FARM LANDS

SUBJECT

Partial Municipal Exemption

PARTIAL MUNICIPAL EXEMPTION

- s.20. (1) In any municipality where lands held and used as farm lands only and in blocks of not less than five acres by any one person are not benefitted to as great an extent by the expenditure of moneys for and on account of public improvements, of the character hereinafter mentioned, in the municipality as other lands therein generally, the council shall annually before the 1st day of March pass a by-law declaring what part, if any, of such lands are exempt or partly exempt from taxation for the expenditures of the municipality incurred for waterworks, fire protection, garbage collection, sidewalks, pavements or sewers, or the lighting, oiling, tarring, treating for dust or watering of the streets, regard being had in determining such exemption to any advantage, direct or indirect, to such lands arising from such expenditures or any of them.*
- (2) The clerk shall forthwith notify by registered mail each person affected by the by-law as to what exemption is provided for his lands by the by-law.*
- (3) Any person complaining that the by-law does not exempt him or sufficiently exempt him or his lands from taxation may, within fourteen days after the mailing of the notice, notify the clerk of the municipality and the secretary of the Ontario Municipal Board of his intention to appeal against the provisions of the by-law, or any of them, to the Ontario Municipal Board which has power to alter or vary any or all of the provisions of the by-law and to determine the matter of the complaint in accordance with the spirit and intent of this section.*
- (4) If the council fails to pass the by-law before the 1st day of March, any person affected may, on or before the 21st day of March, notify the clerk of the municipality and the Ontario Municipal Board of his intention to appeal to the Ontario Municipal Board, and, upon such an*

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FARM LANDS

Partial Municipal Exemption

appeal being taken, the Ontario Municipal Board may make an order declaring what part, if any, of the lands of the person appealing is exempt or partly exempt from taxation, and such order when published in The Ontario Gazette shall be deemed to be the by-law of the council as if passed under subsection (1) except that there shall be no appeal therefrom under subsection (3).

- (5) *Nothing in this section shall be deemed to prevent or affect any right of appeal against an assessment.*

No cases or comments.



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SECTION

FARM LANDS

SUBJECT

Partial Municipal Exemption

PARTIAL MUNICIPAL EXEMPTION

- s.21. (1) *Section 20 applies to a police village so that farm lands situate therein may be exempted or partly exempted from taxation in the same manner, to the same extent, and for the purposes mentioned in that section.*
- (2) *The trustees or board of trustees of a police village have power to and shall pass by-laws as provided for in section 20 and forthwith after passing the by-law shall furnish a certified copy thereof to the clerk of the township or townships in which the police village or any part thereof is situate, and all notices to be given under that section shall be given to the trustees or board of trustees of the police village instead of to the clerk of the municipality.*
- (3) *The trustees or board of trustees of a police village shall notify the clerk of the township or townships, in which the police village or any part thereof is situate, of any decision of the Ontario Municipal Board in respect of lands in the police village made under section 20 forthwith after it is received.*
- (4) *The provisions of every by-law of a police village passed under the authority of this section, and of every decision of the Ontario Municipal Board with respect to such police village, shall be made applicable by the council of the township or townships in which the police village or any part thereof is situate in striking the rates to be levied in or for the purposes of the police village.*

No cases or comments.

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SECTION

GOLF COURSES

SUBJECT

Fixed Assessment

GOLF COURSES- FIXED ASSESSMENT

- s.22. (1) *Any local municipality may enter into an agreement with the owner of a golf course for providing a fixed assessment for the land occupied as a golf course, but not including the part of the land actually occupied by any building or structure or such building or structure, to apply to taxation for general, school and special purposes, but not to apply to taxation for local improvements.*
- (2) *Where a golf course has a fixed assessment under an agreement under subsection (1),*
- (a) *the golf course shall be assessed each year as if it did not have a fixed assessment;*
 - (b) *the treasurer shall calculate each year what the taxes would have been on the golf course if it did not have a fixed assessment;*
 - (c) *the treasurer shall keep a record of the difference between the taxes paid each year and the taxes that would have been paid if the golf course did not have a fixed assessment and shall debit the golf course with this amount each year during the term of the agreement and shall add to such debit on the 1st day of January in each year such interest as may be agreed upon on the aggregate amount of the debit on such date; and*
 - (d) *the taxes paid on the fixed assessment shall be distributed among the bodies for which the municipality is required to levy in the proportion that the levy for each body bears to the total levy.*
- (3) *Every agreement shall be registered in the proper land registry office in the county in which the golf course or any part thereof is located.*

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GOLF COURSES

Fixed Assessment

(4) When an agreement is for any reason terminated as to the whole of the lands in respect of which the fixed assessment is given, the owner shall,

- (a) pay to the municipality the amount debited against the golf course, including the amounts of interest debited in accordance with clause (2)(c); or*
- (b) require the municipality to purchase the golf course for an amount equal to the fixed assessment.*

(5) When an agreement is for any reason terminated as to a part of the land in respect of which the fixed assessment is given, the owner shall,

- (a) pay to the municipality that portion of the amount debited against the golf course, including the amounts of interest debited in accordance with clause (2)(c), that is attributable to the portion of the golf course in respect of which the agreement is terminated; or*
- (b) require the municipality to purchase the part of the golf course in respect of which the agreement is terminated for an amount equal to the fixed assessment that is attributable to such part.*

(6) Where a golf course has a fixed assessment under an agreement under subsection (1), the agreement shall terminate as to the whole or any part of the land in respect of which the fixed assessment is given when the whole or any such part thereof ceases to be occupied for the purposes of a golf course.

(7) Any agreement may be terminated on the 31st day of December in any year upon the owner of the golf course giving six months notice of such termination in writing to the municipality.

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GOLF COURSES

Fixed Assessment

(8) Any dispute between the municipality and the owner of the golf course in relation to an agreement or this section shall be settled by the Ontario Municipal Board, and the decision of the Board is final.

No cases or comments.



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SECTION TRANSPORTATION AND UTILITY COMPANIES

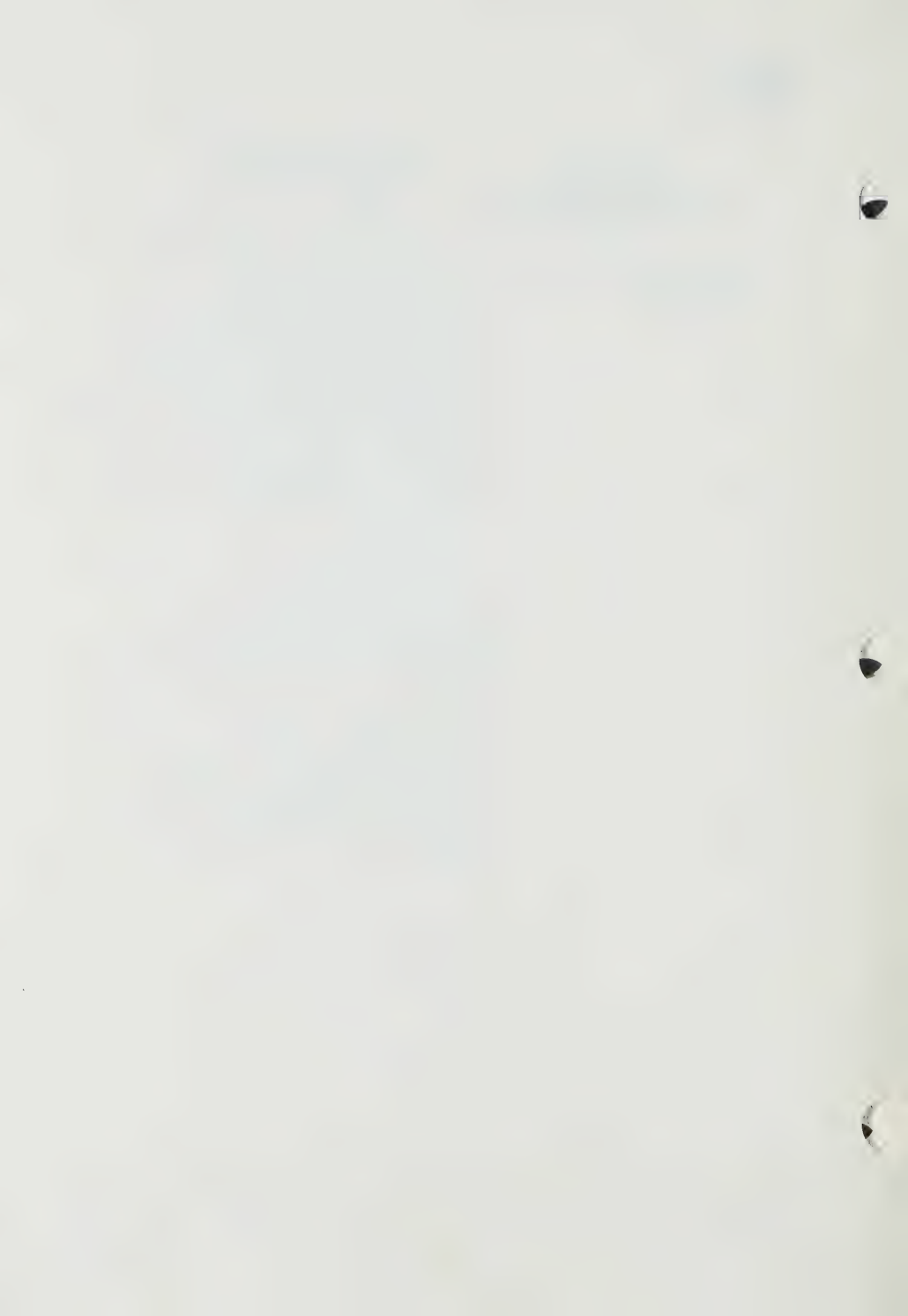
SUBJECT

Liability to Assessment

TRANSPORTATION AND UTILITY COMPANIES

- s. 23. (1) The property by subclause 1(k)(v) declared to be "land" that is owned by companies or persons supplying water, heat, light and power to municipalities and the inhabitants thereof, and companies and persons operating transportation systems and companies or persons distributing by pipe line natural gas, manufactured gas or liquefied petroleum gas or any mixture of any of them shall, whether situate or not situate upon a highway, street, road, lane or other public place, when and so long as in actual use, be assessed at its market value in accordance with section 18.*
- (2) This section does not apply to a pipe line as defined in section 24.*
- (3) Where the property of any such company or person extends through two or more municipalities, the portion thereof in each municipality shall be separately assessed therein at its value as an integral part of the whole property.*
- (4) Notwithstanding any other provisions of this Act, the structures, substructures, superstructures, rails, ties, poles and wires of such a transportation system are liable to assessment and taxation in the same manner and to the same extent as those of a railway are under section 29 and not otherwise.*

No cases or comments.





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SECTION

PIPE LINES

SUBJECT

Liability to Assessment

PIPE LINES

s.24. (1) *In this section,*

- (a) "gas" means natural gas, manufactured gas or propane or any mixture of any of them;
- (b) "oil" means crude oil or liquid hydrocarbons or any product or by-product thereof;
- (c) "pipe line" means, subject to subsection (3), a pipe line for the transportation or transmission of gas that is designated by the owner as a transmission pipe line and a pipe line for the transportation or transmission of oil, and includes,
 - (i) all valves, couplings, cathodic protection apparatus, protective coatings and casings,
 - (ii) all haulage, labour, engineering and overheads in respect of such pipe line,
 - (iii) any section, part or branch of any pipe line,
 - (iv) any easement or right of way used by a pipe line company, and
 - (v) any franchise or franchise right,but does not include a pipe line or lines situate wholly within an oil refinery, oil storage depot, oil bulk plant or oil pipe line terminal;
- (d) "pipe line company" means every person, firm, partnership, association or corporation owning or operating a pipe line all or any part of which is situate in Ontario.

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PIPE LINES

SUBJECT

Liability to Assessment

- (2) On or before the 1st day of October in each year, the pipe line company shall notify the assessment commissioner of each municipality of the age, length and diameter of all its transmission pipe lines located in the municipality as of the 1st day of September of that year.
- (3) All disputes as to whether or not a gas pipe line is a transmission pipe line shall, on the application of any interested party, be decided by the Ontario Energy Board and its decision is final.
- (4) Notwithstanding any other provisions of this Act, but subject to subsection (6), a pipe line shall be assessed for taxation purposes at the following rates:

Oil Transmission Pipe Line

Size of Pipe	Assessment per Foot of Length
3/4" to 1"....	Nominal Inside Diameter.... \$ 1.20
1 1/4" to 1 1/2"	" " " " " 1.45
2" and 2 1/2"....	" " " " " 1.70
3".....	" " " " " 2.20
4" and 4 1/2"....	" " " " " 2.70
5" and 5 5/8"....	" " " " " 3.20
6" and 6 5/8"....	" " " " " 3.70
8".....	" " " " " 5.90
10".....	" " " " " 6.80
12".....	" " " " " 8.55
14".....	Outside Diameter 9.20
16".....	" " " " " 10.35
18".....	" " " " " 11.45
20".....	" " " " " 12.45
22".....	" " " " " 13.75
24".....	" " " " " 14.80
26".....	" " " " " 15.70
28".....	" " " " " 16.75
30".....	" " " " " 17.70
32".....	" " " " " 18.65
34".....	" " " " " 19.50
36".....	" " " " " 20.35
38".....	" " " " " 21.35



PIPE LINES

Liability to Assessment

Field and Gathering Pipe Line

Size of Pipe	Assessment per Foot of Length
3/4" to 1".... Nominal Inside Diameter....	\$.90
1 1/4" to 1 1/2".....	1.09
2" and 2 1/2"....	1.31
3".....	1.69
4" and 4 1/2"....	2.10
5" and 5 5/8"....	2.47
6" and 6 5/8"....	2.89
8".....	4.65
10".....	5.44
12".....	6.90

Gas Transmission Pipe Line

Size of Pipe	Assessment per foot of Length
3/4" to 1".... Nominal Inside Diameter....	\$ 1.20
1 1/4" to 1 1/2".....	1.45
2" and 2 1/2"....	1.75
3".....	2.25
4" and 4 1/2"....	2.80
5" and 5 5/8"....	3.30
6" and 6 5/8"....	3.85
8".....	6.20
10".....	7.25
12".....	9.20
14"..... Outside Diameter	10.00
16".....	11.40
18".....	12.75
20".....	14.00
22".....	15.65
24".....	17.00
26".....	18.25
28".....	19.70
30".....	21.10
32".....	22.50
34".....	23.80
36".....	25.15
38".....	26.70
42".....	29.50



PIPE LINES

Liability to Assessment

- (5) *The assessment of pipe lines in each municipality determined under subsection (4) shall be adjusted by the application of the equalization factor in use in the municipality for the year 1978 pursuant to section 55.*
- (6) *A pipe line shall be depreciated at the rate of 5 per cent of the assessed value of the pipe line every three years from the year of installation, with a maximum depreciation of 55 per cent.*
- (7) *A pipe line removed from one location and reinstalled in another location shall, where depreciation is applicable, continue to be depreciated at the foregoing rates as though remaining in its original location.*
- (8) *A pipe line that has been abandoned in any year ceases to be liable for assessment effective with the assessment next following the date of abandonment.*
- (9) *Where a pipe line has been constructed and used for the transportation of oil or gas and ceases to be so used by reason of an order or regulation of an authority having jurisdiction in that behalf, other than the taxing authority, and an application to the proper authority for permission to abandon such pipe line has been refused, the assessment of such pipe line shall be reduced by 20 per cent so long as it is not used for the transportation of oil or gas.*
- (10) *Where a pipe line is located on, in, under, along or across any highway or any lands, other than lands held in trust for a band or body of Indians, exempt from taxation under this or any special or general Act, the pipe line is nevertheless liable to assessment and taxation in accordance with this section.*



Ontario
SECTION

Ministry
of
Revenue

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SUBJECT

PIPE LINES

Liability to Assessment

- (11) *Notwithstanding the other provisions of this Act or any other special or general Act, a pipe line liable for assessment and taxation under this section is not liable for assessment and taxation in any other manner for municipal purposes, including local improvements, property and business taxes, but all other land and buildings of the pipe line company liable for assessment and taxation under this or any other special or general Act continue to be so liable.*
- (12) *Where a pipe line extends through two or more municipalities, only the portion or portions thereof in each municipality are liable for assessment and taxation in that municipality.*
- (13) *Where a pipe line is placed on a boundary between two municipalities or so near thereto as to be in some places on one side and in other places on the other side of the boundary line or on or in a road that lies between two municipalities, although it may deviate so as in some places to be wholly or partly within either of them, such pipe line shall be assessed in each municipality for one-half of the amount assessable against it under this section.*
- (14) *The assessment of a pipe line under this section shall be deemed to be real property assessment and the taxes payable by a pipe line company on the assessment of a pipe line under this section are a lien on all the lands of such company in the municipality.*
- (15) *The rates set out in subsection (4) shall be reviewed by the Minister in the year 1983 and every third year thereafter, and in any such year the Lieutenant Governor in Council may by regulation amend or re-enact the table of rates set out in subsection (4).*

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PIPE LINES

Liability to Assessment

(16) Notwithstanding any provisions of this section to the contrary, where, as a result of making a proclamation under section 70, an assessment at market value is made of real property in any municipality or in territory without municipal organization comprised in a locality, the Lieutenant Governor in Council may by regulation,

- (a) prescribe rates in lieu of the rates in subsection (4) to be applied for the taxation of pipe lines in such municipality or territory,*
- (b) where two or more pipe lines occupy the same right of way, designate the second and subsequent pipe lines and prescribe the percentage of the rates as so prescribed at which the second and subsequent pipe lines are assessable and taxable,*

and the rates and percentages of rates as so prescribed shall apply in such municipality and territory in the year in which taxation is first levied on the basis of the new assessment at market value resulting from such a proclamation and in each year thereafter until such rates and percentages of rates are altered in accordance with subsection (17).

(16a) Notwithstanding any provisions of this section to the contrary, where a reassessment of all property within a municipality or in territory without municipal organization is made under subsection 63(3), the Minister may by regulation,

- (a) prescribe rates in lieu of the rates in subsection (4) to be applied for the taxation of pipe lines; and*



PIPE LINES

Liability to Assessment

- (b) *where two or more pipe lines occupy the same right of way, designate the second and subsequent pipe lines and prescribe the percentage of the rates as so prescribed at which the second and subsequent pipe lines are assessable and taxable,*

and the rates and percentages of rates as so prescribed shall apply in the year in which taxation is first levied on the basis of the new values resulting from such a reassessment and in each year thereafter.

- (17) *Where a general reassessment is made of all real property in any municipality or in territory without municipal organization comprised in a locality, the Minister shall review any rates or percentages of rates prescribed under subsection (16) and the Minister may by regulation,*



- (a) *prescribe rates in lieu of the rates in subsection (16) to be applied for the taxation of pipe lines; and*
- (b) *where two or more pipe lines occupy the same right of way, designate the second and subsequent pipe lines and prescribe the percentage of the rates as so prescribed at which the second and subsequent pipe lines are assessable and taxable,*

and the rates and percentages of rates as so prescribed shall apply in the year in which taxation is first levied on the basis of the new values resulting from such reassessment and in each year thereafter until such rates and percentages of rates are again altered in accordance with this subsection.



PIPE LINES

Liability to Assessment

The extent of the application of section 24 was discussed in the following case:

TRANS-NORTHERN Pipe Line Co. v. the Corporation of the City of Nanticoke et al. (Div. Ct., July/80)
Objections were raised on the assessment of a length of pipe line, on the grounds that the pipe line, although laid and tested, was not yet in use. The court held that the assessment of pipe lines under s. 24 was unrelated to use, and that the subject pipe line was assessable simply because it was there. The assessment commissioner had the right to assess a pipe line even though the pipe line company did not notify the assessment commissioner of the location of the pipe line according to the provisions of subsection 24(2).

This next case also speaks to the application of section 24:

Re METALORE Resources Ltd. and Regional Assessment Commissioner, Region No. 20 and the Corporation of the Township of Delhi. (C.Ct., Sept./81)

As a result of this case, subsection 24(16a) was added, effective December 1, 1982.



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**A GUIDE TO
THE ASSESSMENT ACT**

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SECTION

STRUCTURES ON BOUNDARY LINES

SUBJECT

STRUCTURES s.25.
ON BOUNDARY
LINES
BETWEEN
MUNICIPALITIES

Where any structure, pipe, pole, wire or other property is erected or placed upon, in, over, under or affixed to any highway forming the boundary line between two local municipalities, or so that such structure, pipe, pole, wire or property is in some places on one side and in other places on the other side of the boundary line, or is on a highway forming the boundary line between two local municipalities although it may deviate so as in some places to be wholly or partly within either of them, it shall be assessed in each municipality for one-half of the whole assessable value in both municipalities taken together.

No cases or comments.

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November, 1987

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A GUIDE TO THE ASSESSMENT ACT

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SECTION

PUBLIC UTILITY COMMISSION

SUBJECT

Liability to Assessment

DEFINITION s.26. (1) In this section,

(a) "commission" means the council of a municipal corporation, or a commission of trustees or other body, operating a public utility for or on behalf of the corporation and includes a municipal parking authority established under any general or special Act;

(b) "public utility" means a public utility as defined in the Municipal Affairs Act and includes parking facilities on land owned by a municipal corporation or by a municipal parking authority established under any general or special Act.

(2) For the purposes of this section, land and buildings owned by and vested in a municipal corporation and used for the purposes of a public utility shall be deemed to be owned by and vested in the commission operating the public utility.

REAL
PROPERTY
ASSESSMENT

(3) Every commission shall pay in each year, to any municipality in which are situated lands or buildings owned by and vested in the commission, the total amount that all rates, except, subject to subsections (4) and (5), rates on business assessment, levied on the assessment for real property that is used as a basis for computing business assessment in that municipality for taxation purposes based on the assessed value of the land according to the value at which lands are assessed in the immediate vicinity and the assessed value of such buildings, would produce.

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PUBLIC UTILITY COMMISSION

Liability to Assessment

BUSINESS
ASSESSMENT

- (4) *The commission shall also pay the amount that the current rates on business assessment on the lands or buildings referred to in subsection (3), and used by the commission in the operating of a public utility, not including any lands or buildings referred to in subsection (5), would produce based on the applicable percentage of the assessed value provided for in subsection (3).*
- (5) *The commission shall also pay the amount that the current rates on business assessment would produce on lands and buildings owned or occupied by the commission for carrying on the business of selling by retail electrical goods, supplies or appliances.*
- (6) *Notwithstanding section 63 of the Local Improvement Act, the commission shall pay local improvement assessments.*
- (7) *The payments received under subsections (3), (4) and (5) shall be credited by the municipality to the general fund of the municipality.*
- (8) *Subject to subsections (3), (4) and (10), the property on which payment is to be made under subsections (3), (4) and (5) shall be assessed according to this Act, and the provisions of this Act respecting appeals apply.*
- (9) *The valuation of properties assessed under this section shall be included when equalizing assessment or apportioning levies for any purpose.*



PUBLIC UTILITY COMMISSION

Liability to Assessment

EXEMPTION
FROM
ASSESSMENT

- (10) In making the assessment referred to in subsection (8), there shall be no assessment of machinery whether fixed or not nor of the foundation on which it rests, works, structures other than buildings referred to in subsection (3) or (5), substructures, superstructures, except where a substructure or superstructure forms an integral part of a building referred to in subsection (3) or (5), rails, ties, poles, towers, lines nor of any of the things excepted from exemption from taxation by paragraph 17 of section 3 nor of other property, works or improvements not referred to in subsection (3) or (5), nor of an easement or the right or use of occupation or other interest in land not owned by the commission.
- (11) Nothing in this section exempts from taxation any part of any works, structures, substructures or superstructures when occupied by a tenant or lessee.
- (12) Telephone companies assessed under this section shall, in addition, be subject to the provisions of section 161 of the Municipal Act.
- (13) This section applies notwithstanding any other provision in this Act or any other general or special Act or any agreement heretofore made, and any agreement heretofore made under which a commission pays taxes, or money in lieu of taxes or for municipal services, is void.
- (14) The provisions of this Act and the Municipal Act with respect to the collection of taxes apply with necessary modifications to the payments required to be made by a commission under this section.



PUBLIC UTILITY COMMISSION

Liability to Assessment

MUNICIPAL
AFFAIRS
ACT

Section 26 of the Assessment Act refers to a number of other statutes. The definition of "Public Utility" in the Municipal Affairs Act reads as follows:

"public utility" means a waterworks, gasworks, including works for the transmission, distribution, and supply of natural gas, electrical power or energy works, or system for the generation, transmission or distribution of electric light, heat or power, a telephone system, a street or other railway system, a bus or other public transportation system or any other works or system for supplying the inhabitants generally with necessities or conveniences that are vested in or owned, controlled or operated by a municipality or municipalities or by a local board.

MUNICIPAL
ACT

Section 161 of the Municipal Act is rather long. It provides for the levy by a municipality of a special tax on telephone and telegraph companies based on the gross receipts of the company.

DEFINITION
OF "PUBLIC
UTILITY"

The definition of "public utility" quoted above is important in that it helps to set the limits of the scope of section 26 of the Assessment Act. The court in this next case addressed itself to the proper limits of the definition itself:

Re PEMBROKE and Area Airport Commission and the Clerk of the Corporation of the Township of Petawawa and the Regional Assessment Commissioner for Renfrew Region. (C.Ct., Oct./71)

The question before the court was whether or not an aerodrome was a "public utility" as defined by the Municipal Affairs Act and the Assessment Act. The court held that the broad, general words in the concluding portion of the definition in the Municipal Affairs Act had to be confined by the more specific terms in the earlier part of the definition. The aerodrome in question did not fall within this limited definition in that it was not similar to a "waterworks, gasworks", etc.



PUBLIC UTILITY COMMISSION

Liability to Assessment

The following case also addressed, among other issues, the meaning of "public utility" in the context of s. 26:

Re City of Hamilton and HAMILTON Harbour
Commissioners et al. 48 O.R. (2d) 757; 28
M.P.L.R. 1. (H.C.J., Oct./84)

REV.

A federally incorporated harbour commission objected when an assessment was purportedly made and taxes levied against its land. The court held the commission to be exempt under s. 3, para. 9 and also exempt from business tax since it was not using the land for business. Furthermore, no payments had to be made under ss.26(3) since the subject corporation was not under the control of a municipality or a "local board" within the context of the Municipal Affairs Act definition of "public utility". It therefore was not a "commission" for the purposes of s. 26.

This next case (discussed previously with respect to Section 3, para. 9) addressed the same issue but concerned lands surrounding a water filtration plant:

PETERBOROUGH Utilities Commission v. the Corporation of the City of Peterborough and Assessment Commissioner. (C.Ct., Dec./82)

The municipality had purchased several parcels of land at the request of a utilities commission. One of these parcels was land surrounding a water filtration plant that was used as a zoological park. The water filtration system was held to be "waterworks"; it therefore was land used by a public utility and was taxable under Section 26. In determining whether the land used as a zoological park was land used for the purposes of a public utility, the court examined the definition of "public utility" in the Municipal Affairs Act and concluded that, to be deemed a public utility, the land must be used to supply "the inhabitants generally with necessities or conveniences". The word "conveniences" must be considered in context with the definition as a whole and the court concluded that a zoological park cannot be considered to be a convenience of the same type as those mentioned in the definition. The park was held to be exempt.



Similar reasoning was applied in the following case:

Re City of LONDON and Regional Assessment
Commissioner, Region No. 23 et al. 42 O.R. (2d)
49. (C.Ct., April/83)
Confirmed by Div. Ct., Oct./83. 44 O.R. (2d) 93.
Although the Municipal Affairs Act and the
Assessment Act did not specifically define sewage
works as a public utility, the court reviewed
existing legislation and held that the
Legislature intended to include sewage works as a
public utility. Furthermore, the court
considered sewage systems and sewage works to be
"necessaries or conveniences" supplied to the
inhabitants.

The provisions of section 26 continue to apply
where the public utility operates for one
municipality but is situated on lands owned by a
second municipality, as discussed in this next
case (also summarized under section 3, paragraph
9):

REV.

BRAMPTON Hydro-Electric Commission v. Assessment
Commissioner for Region No. 15 and the Corporation
of the City of Brampton. (D.Ct., Aug./87)
A public utilities commission argued that section
26 did not apply because the public utility was
operated for the City of Brampton but was situated
on lands owned by the Regional Municipality of
Peel. The court held that the owner of the lands
need not be the same as the municipal corporation
for which the public utility operates,
particularly in light of the wording of ss.26(3).



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SECTION

BRIDGES AND TUNNELS

SUBJECT

International/Provincial
Boundary

BETWEEN
INTERNATIONAL/
PROVINCIAL
BOUNDARY

s.27.

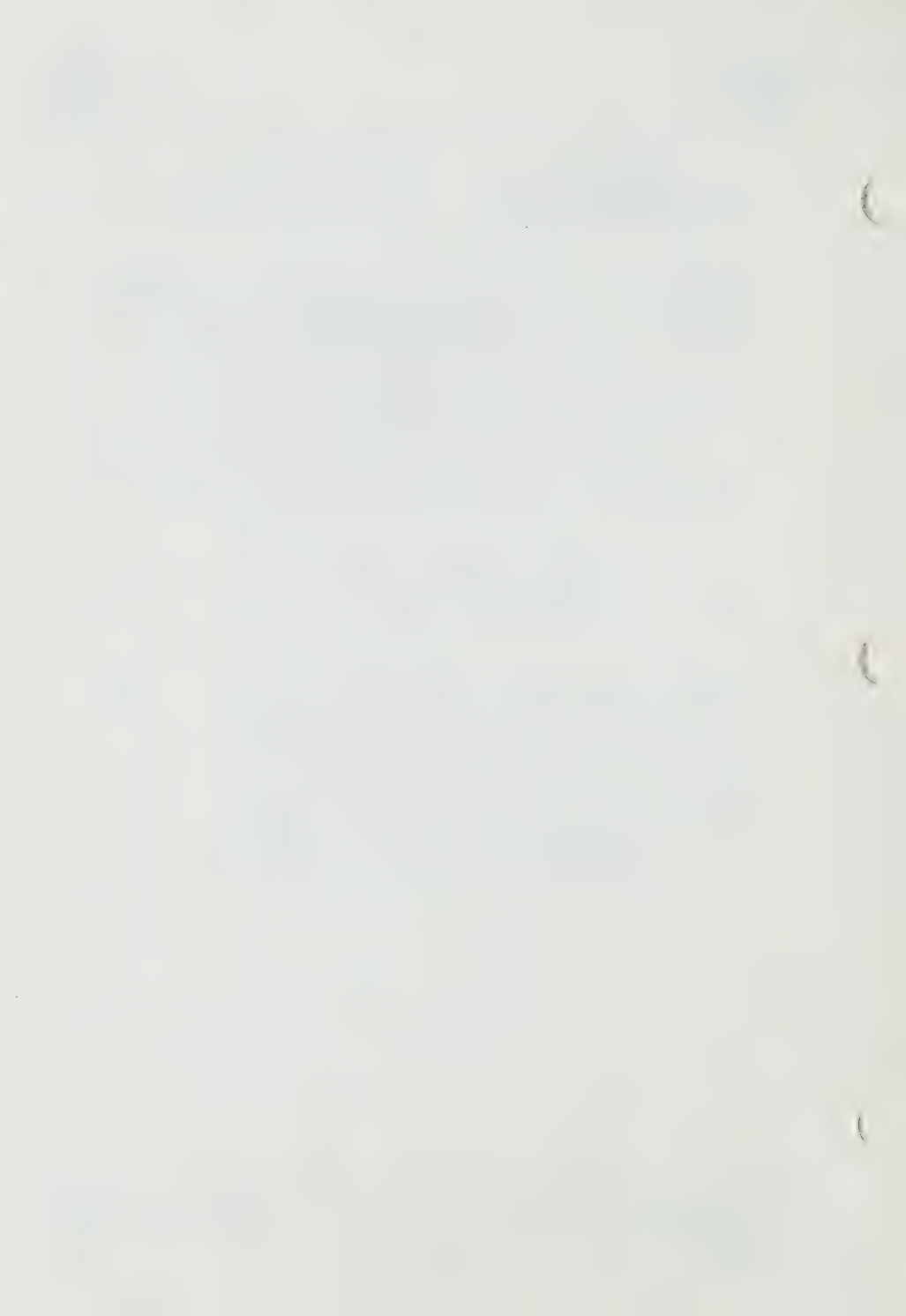
In the case of any bridge or tunnel liable to assessment that belongs to or is in the possession of any person or corporation, and that crosses a river forming the boundary between Ontario and any other country or province, the part of such structure within Ontario shall be valued as an integral part of the whole and on the basis of the valuation of the whole, and at its actual cash value as it would be appraised upon a sale to another company possessing similar powers, rights and franchises and subject to similar conditions and burdens, but subject to the provisions and basis of assessment set forth in subsection 23(1).

No cases or comments.

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SECTION

BRIDGES AND TUNNELS

SUBJECT

Municipal Boundary

MUNICIPAL
BOUNDARY

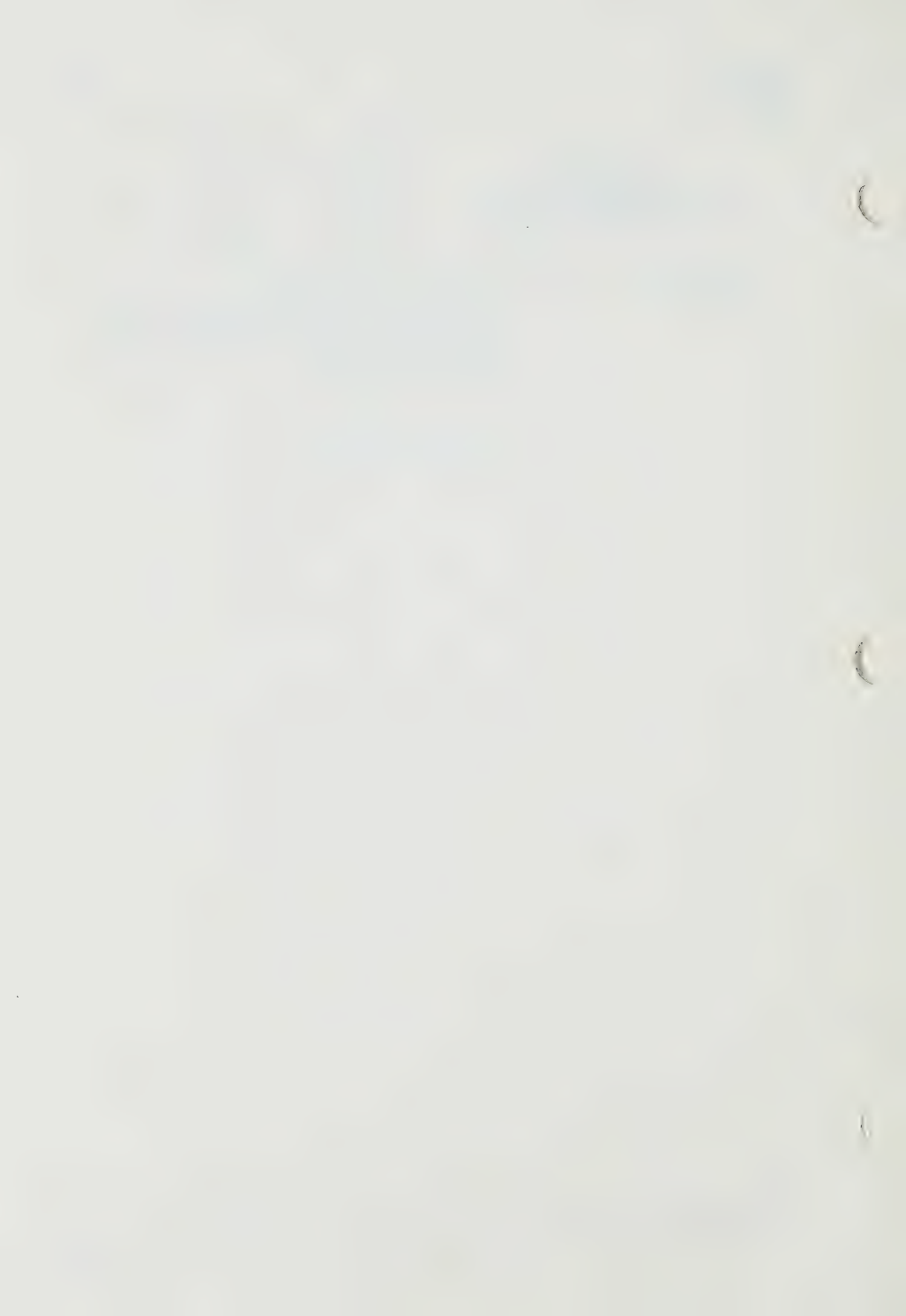
s.28. Any bridge or tunnel belonging to or in possession of any person or corporation between two municipalities in Ontario shall be valued as an integral part of the whole and on the basis of valuation of the whole.

No cases or comments.

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SECTION

RAILWAY LAND

SUBJECT

Liability to Assessment

STATEMENT SHOWING LAND HOLDINGS

- s.29. (1) *Every railway company shall transmit annually on or before the 1st day of July to the assessment commissioner of every municipality or locality in which any part of the roadway or other real property of the company is situated, a statement showing,*
- (a) *the quantity of land occupied by the roadway, and a description sufficient to identify what land is so occupied;*
 - (b) *the vacant land owned by the company and not in actual use by the company;*
 - (c) *the quantity of land occupied by the railway and being a part of a highway, street, road or other public land, but not being a highway, street or road that is merely crossed by the railway; and*
 - (d) *the real property, other than that referred to in clause (a), (b) or (c), in actual use and occupation by the railway.*

METHOD OF ASSESSMENT

- (2) *The land and property under subsection (1) shall be assessed as follows,*
- (a) *the roadway or right of way at the value at which lands are assessed in the immediate vicinity, but not including the structures, substructures and superstructures, rails, ties, poles and other property thereon;*
 - (b) *the vacant land, at its value as other vacant lands are assessed under this Act;*

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RAILWAY LAND

Liability to Assessment

- (c) *the structures, substructures, superstructures, rails, ties, poles and other property belonging to or used by the company (not including rolling stock and not including tunnels or bridges in, over, under or forming part of any highway) upon, in, over, under or affixed to any highway, street or road (not being a highway, street or road merely crossed by the line of railway) at their actual cash value as they would be appraised upon a sale to another company possessing similar powers, rights and franchises, regard being had to all circumstances adversely affecting the value including the non-user of such property;*

- (d) *the real property not designated in clauses (a), (b) and (c) in actual use and occupation by the company, at its actual cash value as it would be appraised upon a sale to another company possessing similar powers, rights and franchises.*

STRUCTURES
EXEMPT
FROM
ASSESSMENT

- (3) *Notwithstanding any other provision in this Act, the structures, substructures, superstructures, rails, ties, poles, wires and other property on railway lands and used exclusively for railway purposes or incidental thereto (except stations, freight sheds, offices, warehouses, elevators, hotels, heating plants, round houses and machine, repair and other shops) shall not be assessed, but heating plants shall be exempt from assessment to the extent that the amount of steam or heat is used in relation to the cleaning or heating of rolling stock.*



RAILWAY LAND

Liability to Assessment

BUSINESS
ASSESSMENT
ON HOTELS

(5) A railway company assessed under this section is exempt from assessment in any other manner for municipal purposes except for local improvements and except for business assessment in respect of hotels under section 7 and business assessment upon the portion of a heating plant that is in the proportion that the amount of the heat produced by such plant that is sold for the purposes of a hotel or for a purpose not exclusively a railway purpose or incidental thereto bears to the total heat produced by such plant in any year.

The provisions of subsection 29(3) apply only to railway companies, as illustrated in this next case:

Re CHROMASCO Ltd. and Walsh et al. 42 O.R. (2d) 770. (H.C.J., July/83)

Confirmed by Div. Ct., Sept./84. 47 O.R. (2d) 313.

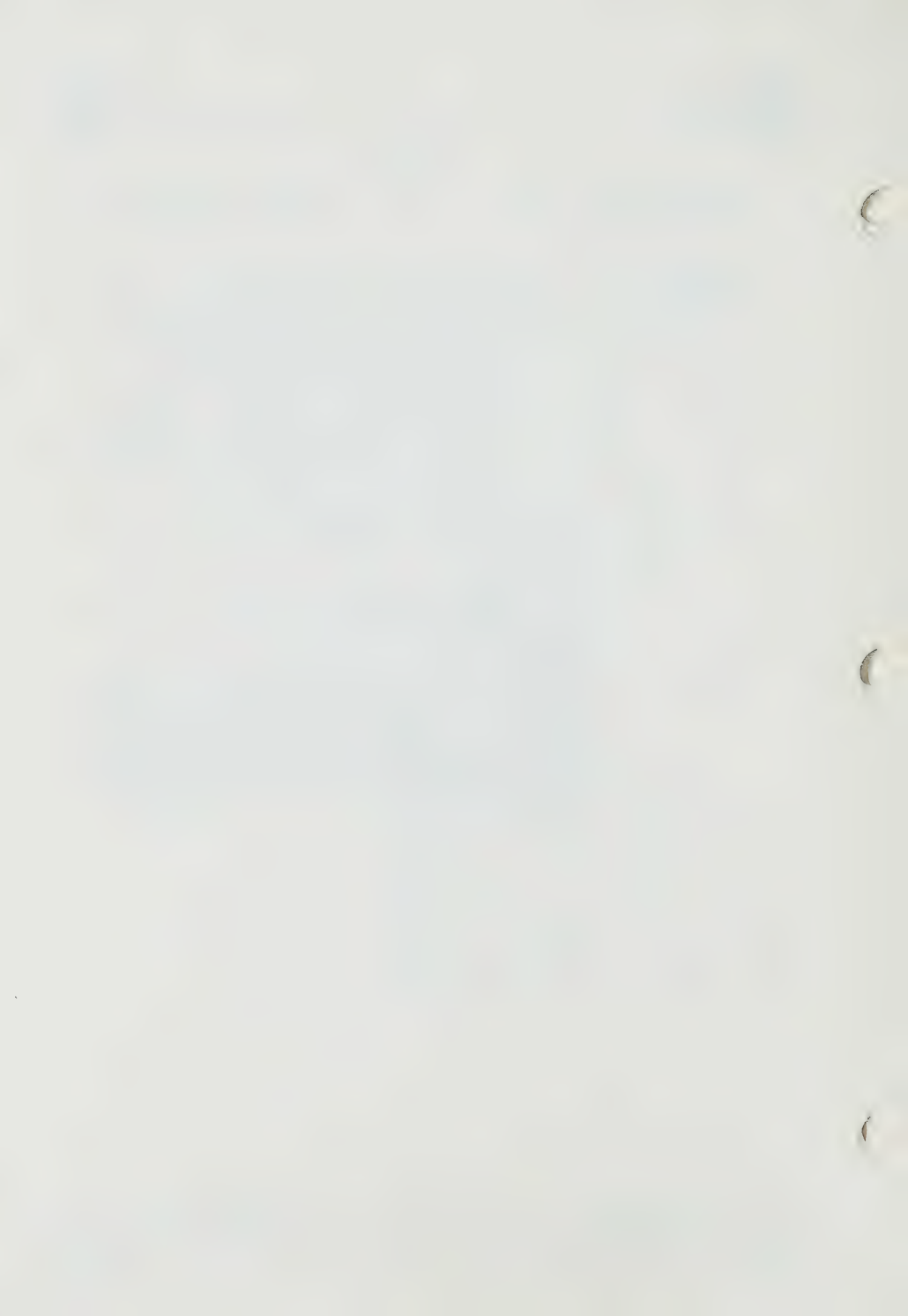
A branch line of a railway company was situated on the land of a manufacturing plant and was used solely by the manufacturer. The court ruled that because Section 29 as a whole was concerned with the assessment of railway company lands, the exemption provision of ss.29(3) applied only to railway companies. Therefore the railway line was assessable.

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SECTION

ASSESSMENT NOTICE

SUBJECT

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SECTION

NOTICE OF ASSESSMENT

SUBJECT

Delivery Requirements

NOTICE OF
ASSESSMENT

s.30. (1) *Where, in respect of any parcel of land, there has been a change in any particular described in paragraphs 1 to 18 of subsection 13(1) that is not reflected in the last assessment roll as returned, the assessment commissioner or an assessor shall, at least fourteen days prior to the completion of the assessment roll, deliver in the manner provided in this section to every person described in paragraph 2 of subsection 13(1) who is affected by the change a notice in a form approved by the Minister showing,*

- (a) *the sum or sums for which such person has been assessed;*
- (b) *whether such person is a public or a separate school supporter; and*
- (c) *such other particulars as are directed by the Minister to be shown in the notice,*

and the assessment commissioner or assessor shall enter in the roll opposite the name of the person the date of delivery of the notice or shall make one or more certificates to be attached to the roll or to any part of the roll certifying the date or dates upon which the notices were delivered, and the entry, certificate or certificates are prima facie proof of the delivery.

- (2) *When the person assessed is resident in the municipality, the notice shall be delivered by leaving it at his residence or place of business or by mailing it addressed to him at his residence or place of business.*
- (3) *When the person assessed is not resident in the municipality, the notice shall be delivered by mailing it addressed to him at his last known address.*

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NOTICE OF ASSESSMENT

Delivery Requirements

- (4) When a person assessed furnishes the assessment commissioner with a notice in writing giving the address to which the notice of assessment may be delivered to him and requesting that the notice be delivered to such address, the notice of assessment shall be so delivered, and such notice stands until revoked in writing.
- (5) The assessment commissioner or an assessor shall deliver with the notice required by subsection (1), or publish in a newspaper having general circulation in the municipality in which the land assessed is situated, a notice setting forth,
- (a) the last day for appealing the assessment;
 - (b) the times and places where the assessment roll may be examined and discussed with the assessment commissioner or an assessor;
 - (c) any significant and unusual change in the amount of the assessment; and
 - (d) any other information which, in the opinion of the assessment commissioner, is desirable,

but any failure to send such notice does not affect the validity of any assessment.

Section 30 of the Assessment Act sets out the requirements for the preparation and delivery of notices of assessment. The traditional position of the courts has been that notice requirements in statutes that relate to taxation must be followed very closely in order that the rights of individuals may be protected. The Assessment Act has a direct bearing on municipal taxation; therefore, the notice requirements in s. 30 have been interpreted very strictly. Consider the following case:



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NOTICE OF ASSESSMENT

Delivery Requirements

City of Ottawa v. R.M.A. Restaurants (Ottawa) Ltd. 28 O.R. (2d) 705; 111 D.L.R. (3d) 273. (H.C.J., May/80)

Confirmed by C.A., June/81. 33 O.R. (2d) 163; 125 D.L.R. (3d) 256.

A notice relating to business assessment but not realty assessment was mailed to a tenant of commercial property leased from the Crown. The court held that since the tenant had not received a notice of realty assessment, no proper realty assessment had been made, and no realty tax was payable for the period in question.

The following cases also deal with problems associated with the provisions of s. 30:

Re FLEMING and Smith Ltd. and the Regional Assessment Commissioner, Region No. 31 et al. 26 O.R. (2d) 691. (D.J., Nov./79)

Re Ruth SMITH and the Corporation of the Town of Whitby. (O.M.B., April/63)

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SECTION

NOTICE OF ASSESSMENT

SUBJECT

Amended Notice

AMENDED
ASSESSMENT
NOTICE

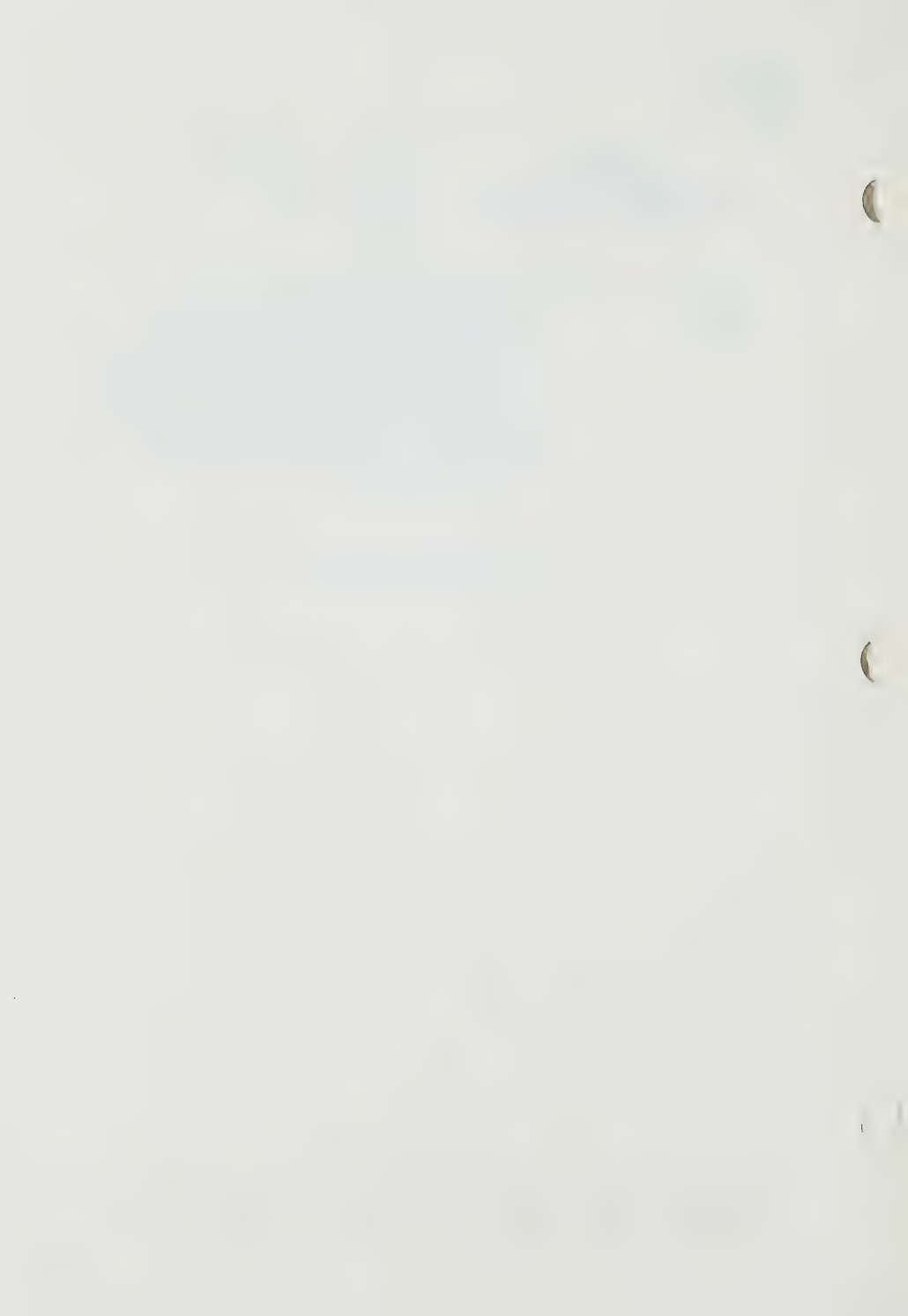
s.31. *Notwithstanding the delivery or transmission of any notice provided for by section 30, the assessment commissioner at any time before the time fixed for the return of the assessment roll may correct any defect, error, omission or misstatement in any assessment and alter the roll accordingly, and he shall do so upon notice being given to him of any defect, error, omission or misstatement, and, upon so correcting or altering any assessment, he shall deliver or transmit to the person assessed an amended notice.*

No cases or comments.

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SECTION

OMITTED ASSESSMENT

SUBJECT

OMITTED ASSESSMENT

- s.32. (1) *If any land liable to assessment or any business assessment, has been in whole or in part omitted from the collector's roll for the current year or for any part or all of either or both of the next two preceding years, and no taxes have been levied for the assessment omitted, the assessor shall make any assessment necessary to rectify the omission and the clerk of the municipality upon notification thereof shall enter the assessment on the collector's roll and such taxes as would have been payable if the assessment had not been omitted shall be levied and collected.*
- (2) *For the purposes of this section, "omitted" includes the invalidation or setting aside of an assessment by any court or assessment tribunal on any ground except that the land is not liable to taxation.*
- (3) *If any land that is liable to taxation has been entered on the collector's roll for the current year or for any part or all of either or both of the next two preceding years as exempt from taxation, and no taxes have been levied on that land, the assessor shall make any assessment necessary to correct the omission and the clerk of the municipality upon notification thereof shall enter that land as liable to taxation on the collector's roll and such taxes as would have been payable if that land had been entered in the collector's roll as property liable to tax shall be levied and collected, but no such amendment shall be made where that land has been held by any court or assessment tribunal not to be liable to taxation.*

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OMITTED ASSESSMENT

Section 32 provides for omissions in assessment to be added to the collector's roll, and further provides that these changes effectively can be backdated for two years. There must be an omission. Consider the following case:

Re BEAVER Lumber Co. Ltd. and the Corporation of the City of Ottawa. 12 O.R. (2d) 314. (Div. Ct., Feb./76)

The assessment on the subject property had been entered on the assessment roll for three years at a figure lower than that at which it should have been assessed. This was due to a human or computer error. The court held that because no land had actually been omitted from the roll, s. 32 could not be used to backdate a corrected assessment figure.

In the following case, the Supreme Court of Canada dealt with a Section 32 which had been issued to assess equipment that had become assessable as a result of a change in legislation:

The District Assessor for the District of Cochrane v. TRANS-CANADA Pipe Lines Ltd. 14 D.L.R. (3d) 775. (S.C.C., Oct./70)

Changes in legislation caused certain equipment to become separately assessable on Jan. 1, 1967. The Supreme Court of Canada rejected an effort to assess this equipment for 1967 taxes under s. 32. The court held that because no real property had been omitted when the roll was returned in 1966 for 1967 taxes, s. 32 could not be used to backdate the new assessment. The new assessment first became valid for taxes in 1968.

A change under s. 32 must be justified by an omission, but that omission can be of any "land" or part of "land" as defined in s. 1. Note the following example:



OMITTED ASSESSMENT

Re O. James ROSS and Elma Ross and J.T. McCann and the Township of Orillia. 12 O.R. (2d) 398. (Div. Ct., April/76)

Objections were raised to an assessment change under s. 32 to account for the value of a new cottage on a property that had previously been assessed only as vacant land. The court held that s. 32 could be used because "land" - in the form of the cottage - had been omitted from the roll. However, the notice to the taxpayer had not specified the years for which the assessment was to apply and therefore the court ruled that the assessment could not be backdated for taxation purposes.

Section 32 can be used, then, to change an assessment so as to allow for a previously unassessed building. This sort of reasoning was extended in the following case to cover a portion of a building:

LANWELL Investments Limited v. the Regional Assessment Commissioner, Region No. 13 and the Corporation of the City of Oshawa. (O.M.B., June/80)

The subject property was a large, mixed-use development that was being constructed in stages. The Board held, among other things, that a change could be made under s. 32 to allow for a newly - constructed portion, because this portion constituted "land" that had been omitted from the roll.

Similar reasoning was used in this next appeal:

REV.

SELECT Properties Ltd. et al. v. the Regional Assessment Commissioner, Region No. 5. (O.M.B., Dec./84)

When an assessor discovered that the common areas of a shopping mall had inadvertently been left out of the assessment calculations, he corrected the error and entered an increased assessment under s. 32. The Mall owners objected, but the Board held that the application of s. 32 was proper because the common areas were "land" that had been "omitted" from the roll.



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SECTION

32

SUBJECT

OMITTED ASSESSMENT



The following case also dealt with the application
of s. 32:

Regional Assessment Commissioner, Region No. 9 v.
G.E. MARTIN et al. (O.M.B., Jan./84)

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SECTION

SUPPLEMENTARY ASSESSMENT

SUBJECT

SUPPLEMENTARY s.33. ASSESSMENT

If, after notices of assessment have been given under section 30 and before the last day of the taxation year for which taxes are levied on the assessment referred to in the notices,

- (a) an increase in value occurs which results from the erection, alteration, enlargement or improvement of any building, structure, machinery, equipment or fixture or any portion thereof that commences to be used for any purpose;*
- (b) land or a portion thereof ceases to be exempt from taxation or to be used for the purpose set forth in subsection 18(3);*
- (c) a person commences to occupy or use land for the purpose of, or in connection with, any business mentioned or described in section 7;*
- (d) a pipeline increases in value because it ceases to be entitled to the reduction provided for in subsection 24(9),*

the assessor shall make such further assessment as may be necessary to reflect the change, and the clerk of the municipality upon notification thereof shall enter a supplementary assessment on the collector's roll and the amount of taxes to be levied thereon shall be the amount of taxes that would have been levied for the portion of such taxation year left remaining after the change occurred if the assessment had been made in the usual way.



SUPPLEMENTARY ASSESSMENT

Section 33 provides for the making of supplementary assessments to allow such things as new structures or businesses to be assessed for taxation during the course of the year. The concept of "use" can be flexible under different circumstances. As the following case demonstrates, a commercial structure sometimes can be considered as being used for a purpose as soon as it is constructed, and a supplementary assessment can be entered accordingly:

BELL Canada v. the Regional Assessment Commissioner, Region No. 19 and the Corporation of the Town of Stoney Creek. 8 O.M.B.R. 470. (O.M.B., May/78)

A supplementary assessment on a commercial building addition was issued effective on the date that the addition was structurally completed. The building's owner objected on the grounds that the equipment installed in the addition did not come into use until some time later. The Board held that the purposes of the building's owner included not only the actual use of the equipment but also the installation of the equipment, and that an assessment under s. 33 could therefore be made as of the date of structural completion.

A supplementary assessment under Section 33(a) cannot be made unless the value of the improvement to the property is at least \$5000 market value, as stipulated in Section 64 of the Assessment Act. Furthermore, the change being reflected in the supplementary assessment must have occurred during the stipulated time frame if s. 33 is to be applicable. Consider this next example:

REV.

Shirley POLLESEL v. the Regional Assessment Commissioner, Region No. 30. (O.M.B., Oct./84)
When an assessor discovered that improvements had been made to a cottage property, he attempted to enter a supplementary assessment pursuant to s. 33. The Board held, however, that his action was improper, since the "increase in value" resulting from the new construction had occurred some years previous to the sending out of the notices for the subject year. Section 33 was therefore the wrong section under which to reflect the increased property value.



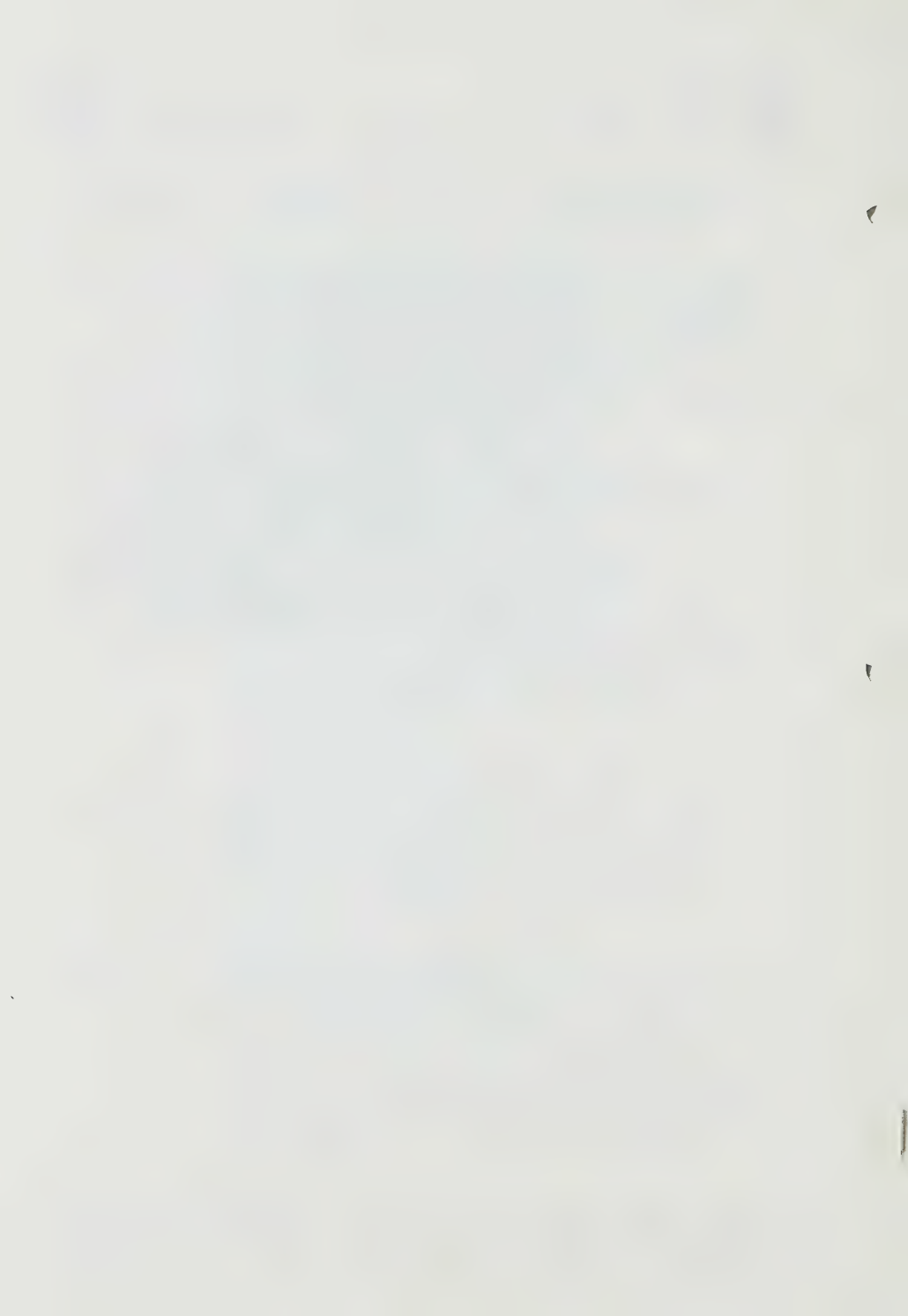
SUPPLEMENTARY ASSESSMENT



However, when the improvements have taken place during previous years, but only commence to be used in the current taxation year, then a supplementary assessment can be issued:

METROPOLITAN Life Insurance Company et al. v. the Regional Assessment Commissioner, Region No. 9 et al. (H.C.J., May/87)

A hotel underwent major renovations during the years 1981 to 1983 but the use of the improvements did not begin until 1984. A supplementary assessment was issued in 1984 to reflect the increase in value resulting from the improvements to the building. The hotel owner argued that a supplementary assessment was not legal because the improvements had taken place in previous taxation years. However, the court allowed the assessment to stand, stating that "the trigger to the legal right to make a further assessment is the commencement of use of the improvements within the year".





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SECTION

SUPPLEMENTARY ASSESSMENT

SUBJECT

Appeal Procedure

APPEAL OF AMENDED, SUPPLEMENTARY, OR OMITTED ASSESSMENT

- s.34. (1) *A person entitled to a notice of assessment under section 31 or assessed under section 32 or 33 shall be notified and be entitled to appeal as if the assessment had been regularly made and the assessment roll was returned fourteen days after the day of mailing of the notice of assessment.*
- (2) *Where a business assessment is made under section 32 or 33, the real property with respect to which such business assessment is computed is, from the time the land is occupied or used for the purpose of or in connection with any business mentioned in section 7, liable to taxation at the rate levied under clause 7(3)(b) of the Ontario Unconditional Grants Act, and the clerk of the municipality shall amend the collector's roll accordingly.*
- (3) *When the collector's roll is altered pursuant to section 32 or 33 and taxes are levied thereon,*
- (a) *the amount thereof that, if the taxes had been levied in the usual way, would have been paid to any body for which the council is required by law to levy rates or raise money shall be set up in the accounts of the municipality as a credit accruing to that body in the same proportion as the levy for that body bears to the total levy;*
 - (b) *notwithstanding the Education Act, the amount credited to a body under clause (a) shall be paid over to such body not later than the 31st day of December in the year in which it was levied and shall be used by such body to reduce the levy for the purposes of such body in the next succeeding year, and, if*

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SUPPLEMENTARY ASSESSMENT

Appeal Procedure

the amount or any portion thereof is not paid over to such body on or before the 31st day of December in the year in which it was levied, the municipality so in default shall, if demanded by such body, pay interest thereon to such body at the rate of 6 per cent per annum or at such higher rate as may from time to time be prescribed by the Lieutenant Governor in Council by regulation for the purpose of this clause from such date until payment is made;

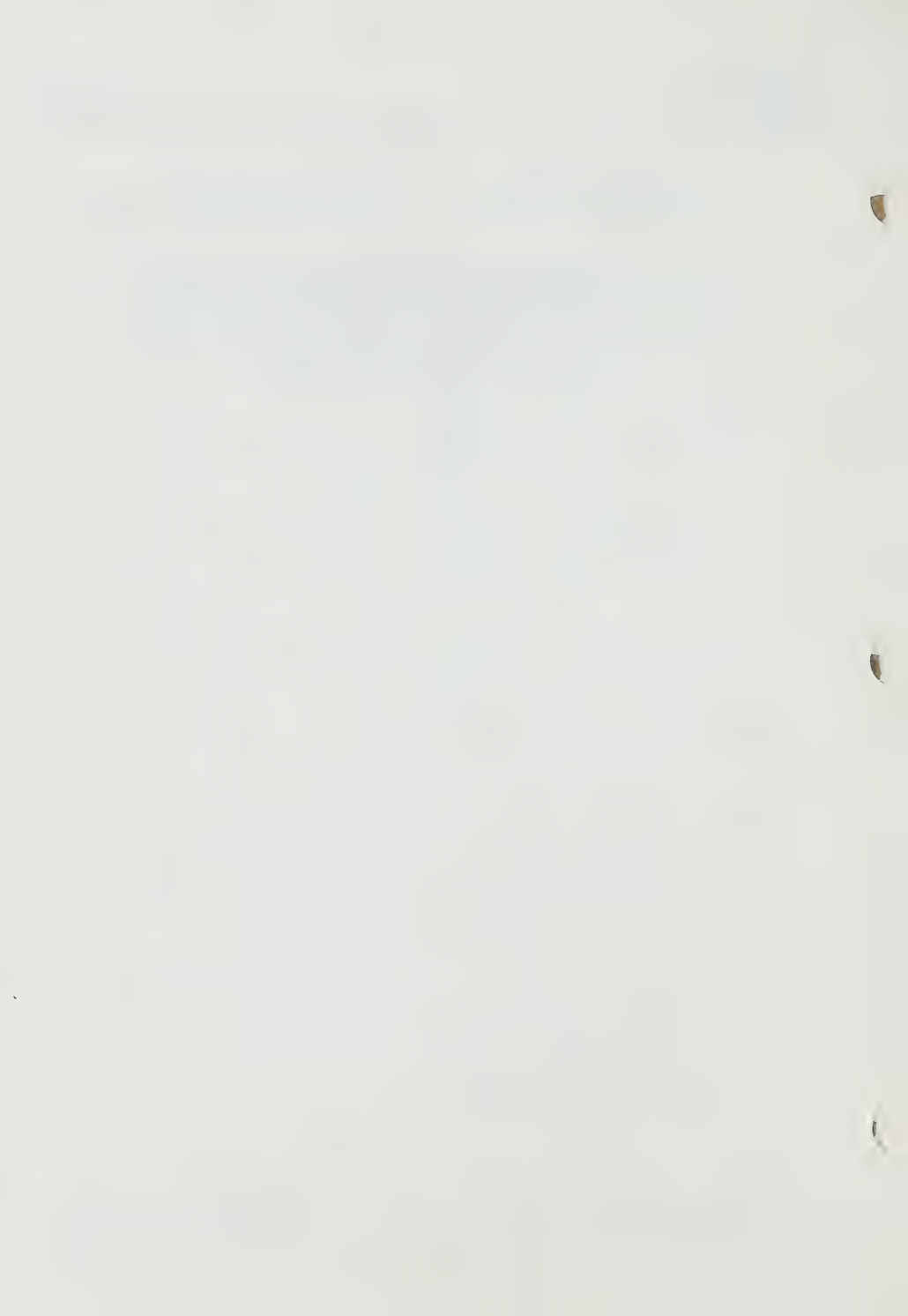
- (c) the balance remaining after the setting up of all credits as provided in clause (a) shall be taken into the general funds of the municipality;*
- (d) notwithstanding clauses (a) and (b), where in a secondary school district a municipality is required under an agreement or an award of a board of arbitrators or the Ontario Municipal Board to pay over to the secondary school board a fixed annual percentage of the costs of the erection or maintenance of a school or schools, it is not necessary for the municipality to pay over an amount to the secondary school board as required by clauses (a) and (b), but the municipality shall set up a credit of the amounts that would but for this clause have been paid over to the board, which credit shall be used to reduce the levy for the board in the following year;*
- (e) the treasurer shall deliver to each of the bodies entitled to a credit under clause (a), on or before the 31st day of December in the year in which the taxes were levied, a statement sufficient to enable the body to determine the correctness of the credit.*



SUPPLEMENTARY ASSESSMENT

Appeal Procedure

Section 34 outlines some of the consequences of assessments under Sections 32 and 33. The notice provisions in ss.34(1) assure the taxpayer of a right of appeal with respect to supplementary assessments. This right of appeal is limited to that portion of real property to which the relevant notices actually relate.





A GUIDE TO THE ASSESSMENT ACT

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SECTION

ASSESSMENT ROLL

SUBJECT

Annual Return

ANNUAL
RETURN OF
ASSESSMENT
ROLL

- s. 35. (1) *Except as provided in section 32 or 33, in every municipality the assessment shall be made annually commencing in the year 1974 and at any time between the 1st day of January and the third Tuesday following the 1st day of December, and the assessment roll of the municipality shall be returned to the clerk not later than the third Tuesday following the 1st day of December in the year in which the assessment is made.*
- (2) *Where in any year it appears that the assessment roll of a municipality or the assessment roll of an area within a municipality will not be or has not been returned to the clerk of the municipality as provided in subsection (1), the Minister may extend the time for the return of the assessment roll for such period as appears necessary.*
- (3) *Where the Minister extends the time for the return of the assessment roll under subsection (2), he shall cause a notice of the extension, specifying the date to which the time has been extended and the final date for commencing an appeal to the Assessment Review Board, to be published in a daily or weekly newspaper that in the opinion of the Minister has such circulation within the municipality as to provide reasonable notice to persons affected thereby.*
- (4) *As soon as practicable after the return of the assessment roll in a municipality, the Assessment Review Board shall hear and dispose of all appeals of assessments for the year for which the roll is returned, and when the appeals have been disposed of by the Assessment Review Board, the regional registrar of the Assessment Review Board shall certify the assessment roll to be the last revised assessment roll of the municipality for the year for which the assessments thereon are made.*

DATE

November, 1987

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ASSESSMENT ROLL

Annual Return

Section 35 provides that the assessment roll shall be returned annually. The assessment roll is therefore a new document each year, but tribunal and court decisions on specific issues can and do bind the Assessment Commissioner with respect to assessment rolls returned in subsequent years provided that the circumstances or facts relevant to that issue have not changed. Consider the following case:

REV.

Re HALAM Park Developments Ltd. and Regional Assessment Commissioner for Hamilton-Wentworth, Region No. 19 et al. 17 O.M.B.R. 504; 50 O.R. (2d) 437. (H.C.J., April/85)
Confirmed by Div. Ct., April/86. 18 O.M.B.R. 351.
The assessment on the subject property had been reduced pursuant to an O.M.B. decision that changed the property classification under ss.63(3) regulations. Leave to appeal that O.M.B. decision to the Divisional Court was denied in May/83. When the assessment in a later year was returned at the higher level as originally classified by the assessor, the owner objected. The court held that since the O.M.B. decision had already settled that very question, the Assessment Commissioner was prevented from changing the property classification. The court ordered that the property should be re-assessed according to the property classification that the O.M.B. had ordered in the previous hearing.

A cautionary note should be sounded on this matter. In the Halam Park case noted above, a specific question had been decided, and that decision was held by the Court to be binding in later years. Such issues as the assessed value of a property are not, however, the sort of specific point that can be settled for all time. If a court lowers an assessment, nothing stops the assessor from raising it again the following year. This point was illustrated in this next case:

Kurt WEISSERT v. the Regional Assessment Commissioner, Region No. 12 and the Corporation of the Borough of Etobicoke. 6 O.M.B.R. 196. (O.M.B., Oct./76)

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ASSESSMENT ROLL

Annual Return

A taxpayer objected when his property assessment, which had been lowered by a County Court Judge, was set at the original higher level the next year. The court held that the previous decision was not binding on the assessor, and because the taxpayer had raised no other arguments the higher assessment had to be confirmed.

In the overwhelming number of cases the assessor will respect the court's decision once the case has been finally settled. In a few instances such as the Weissert case above, the case had not been finally settled before the following year's assessment roll had been returned. Since each year's assessment is a new assessment the assessor was within his rights to raise the new assessment to the old level pending final disposition of the original assessment under appeal.

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A GUIDE TO THE ASSESSMENT ACT

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SECTION

ASSESSMENT ROLL

SUBJECT

Last Revised by A.R.B.

LAST REVISED s.36.
ASSESSMENT
ROLL

- (1) *The yearly assessment roll of a municipality last returned to the clerk, when corrected and revised by the Assessment Review Board and certified by the regional registrar, is for all purposes the last revised assessment roll of the municipality.*
- (2) *Where in a municipality no appeals are made to the Assessment Review Board and the time for appealing has elapsed, the assessment roll shall be presented by the clerk to the regional registrar and if he is satisfied that there have been no such appeals he shall certify the roll and the roll, as so certified, is for all purposes the last revised assessment roll of the municipality.*
- (3) *In every municipality the rate of taxation for each year shall be fixed and levied on the assessment taken in the preceding year according to the last revised assessment roll thereof.*
- (4) *Notwithstanding subsection (3), the council of a municipality may fix and levy the rate of taxation on the assessment taken in the preceding year according to the assessment roll as returned.*
- (5) *Nothing in this section in any way deprives any person of any right of appeal provided for in this Act, which may be exercised and the appeal proceeded with in accordance with this Act, notwithstanding that the assessment roll has been certified by the Assessment Review Board and becomes the last revised assessment roll.*



ASSESSMENT ROLL

Last Revised by A.R.B.

ADJUSTMENT OF
TAXES AS RESULT
OF FINAL APPEAL

(6) No assessment shall be increased, reduced or otherwise altered until all complaints, appeals or other proceedings concerning the assessment have been finally determined and disposed of, and where the result of the final determination and disposition of such complaints, appeals or other proceedings increases, reduces or otherwise alters the assessment, the taxes levied and payable with respect to such assessment shall be adjusted accordingly and any overpayment resulting from such adjustment shall be refunded by the municipality.

(7) Where a special Act conflicts with this section, this section prevails.

When ss.36(6) was revised in 1981, an accompanying section of the legislation provided for a retroactive effect, in that ss.36(6) was made applicable to all assessments from which an appeal was pending on October 15, 1981. The following case dealt with this point:

TORONTO College Street v. City of Toronto. 43 O.R. (2d) 742; 24 M.P.L.R. 1. (H.C.J., Oct./83)
The owner of a hotel successfully appealed its assessment to the Assessment Review Court in March 1981. Subsequently, the assessment commissioner appealed that decision to the Ontario Municipal Board and in June 1983, the O.M.B. set the assessment at its final amount. In this appeal, the court ruled that where an appeal was pending on October 15, 1981 (which it was in this case to the O.M.B.), the municipality was not required to pay any refund to the taxpayer until the assessment was finally determined (that is, until June 1983).



ASSESSMENT ROLL

Last Revised by A.R.B.

This next case also dealt with the applicability of ss.36(6) to a situation involving an outstanding appeal:

REV.

Agostino AMMENDOLIA v. the Regional Assessment Commissioner, Region No. 19. (O.M.B., Jan./85)
After a minor assessment reduction at the A.R.B. level, a property owner appealed further to the O.M.B., but then later withdrew the latter appeal. The Assessment Commissioner requested that in view of ss.36(6) the O.M.B. should confirm the earlier (higher) assessment. The Board held that since no cross-appeal had been filed and no notification of the Commissioner's intent to contest the matter had been given, the assessment level set by the A.R.B. should stand.



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**A GUIDE TO
THE ASSESSMENT ACT**

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SECTION

ANNEXED AREAS

SUBJECT

Assessment

**ASSESSMENT
OF ANNEXED
AREAS**

- s. 37. (1) *Where any land is detached from one municipality and annexed to another municipality after the return of the assessment roll of the latter municipality, the council of the latter municipality shall pass a by-law in the year in which taxation is to be levied on that assessment roll adopting the assessments of the lands annexed, as last revised while they were part of the first-mentioned municipality, as the basis of the assessment of such lands for taxation in that year by the municipality to which the lands are annexed.*
- (2) *The clerk of the municipality, forthwith after the passing of the by-law under subsection (1), shall deliver or send by registered mail to every person assessed in respect of the lands annexed a notice setting out the amount of the assessment, and the same rights in respect of appeal apply as if the assessment had been made in the usual way notwithstanding that the person assessed did not appeal, or notwithstanding the disposition of any appeal taken, as the case may be, in respect of the assessment while the lands were a part of the municipality from which they became detached.*
- (3) *This section does not apply where an annexation order otherwise provides for the assessment of the lands annexed by such order.*

No cases or comments.

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SECTION

ASSESSMENT ROLL

SUBJECT

Commissioner's Affidavit

COMMISSIONER'S AFFIDAVIT ON ROLL

s.38. (1) Upon completion of the assessment roll, the assessment commissioner shall attach thereto his affidavit or solemn affirmation in Form 1 attesting to his compliance with this Act in the preparation of the assessment roll.

(2) The assessment commissioner shall on or before the day fixed for the return to the assessment roll deliver it to the clerk of the municipality completed, with the affidavit or affirmation attached, and the clerk shall immediately upon receipt of the roll file it in his office and it shall be open to inspection during office hours.

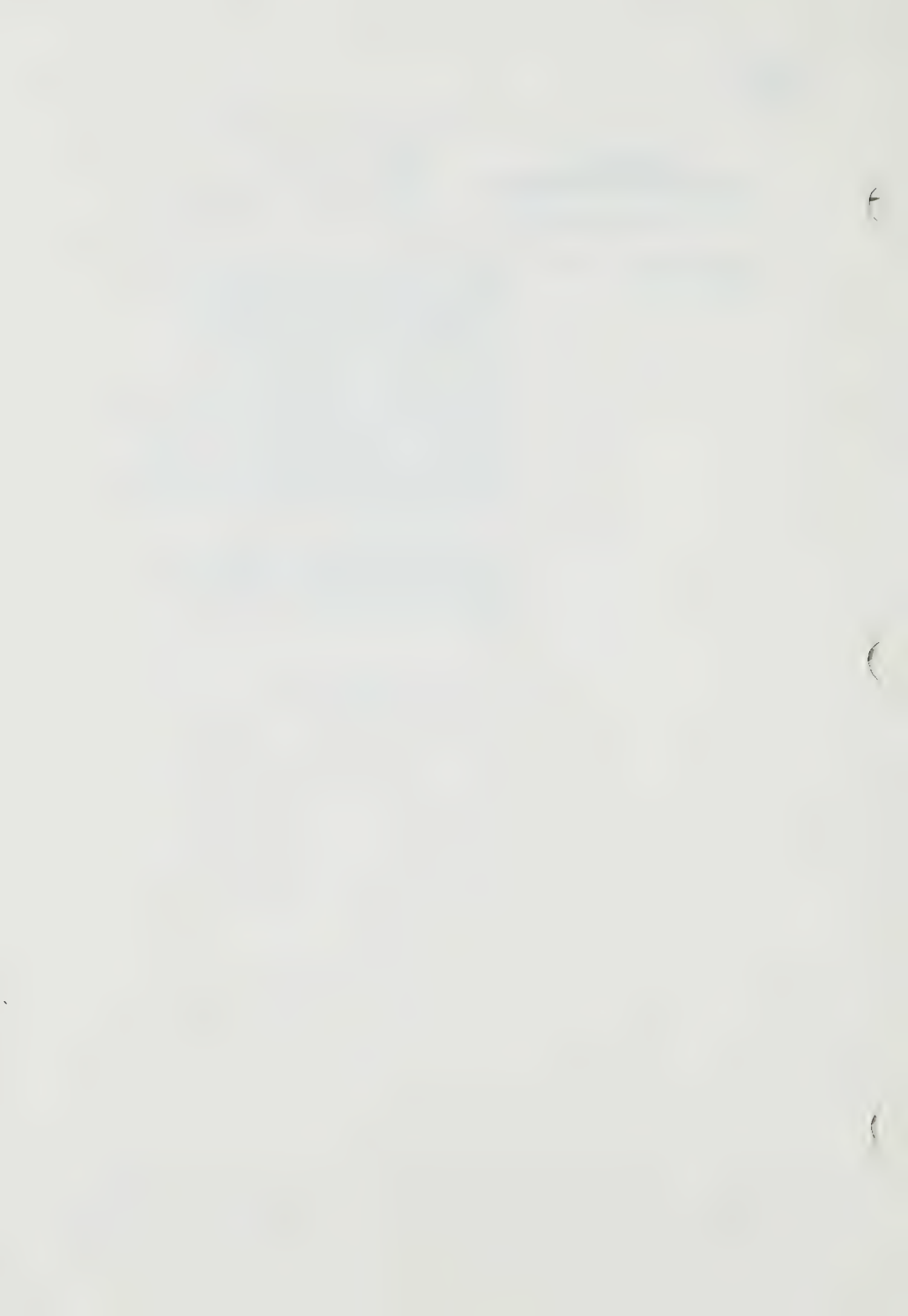
(3) The omission to attach to the assessment roll the affidavit or affirmation required by subsection (1) does not invalidate the roll.

No cases or comments.

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SECTION

ASSESSMENT APPEALS

SUBJECT

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SECTION

COMPLAINTS AND APPEALS

SUBJECT

Assessment Review Board

COMPLAINT s. 39. (1) *Any person, including a municipality or a school board, may complain in writing to the Assessment Review Board that he or another person,*

(a) *was assessed too high or too low;*

(b) *was wrongly placed on or omitted from the assessment roll;*

(c) *was wrongly placed on or omitted from the roll as a public or separate school supporter.*

TIME LIMIT

(2) *A complaint shall state a name and address where notices can be given to the complainant and shall be delivered or mailed to the regional registrar of the Assessment Review Board within twenty-one days after the assessment roll is required to be returned or within twenty-one days after the roll is returned, whichever is later.*

COMPLAINT FOR ANOTHER PERSON

(3) *Where the complaint concerns the assessment of another person,*

(a) *the complaint shall state a name and address where notices can be given to the person; and*

(b) *the complainant shall deliver or mail a copy of the complaint to the person within the time limited by subsection (2).*

(4) *The regional registrar shall forthwith transmit a copy of all complaints received by him to the assessment commissioner.*

PARTIES TO COMPLAINT

(5) *The parties to the proceedings are the assessment commissioner, the municipality, all persons complaining and all persons whose assessment is complained of.*

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COMPLAINTS AND APPEALS

Complaints and Jurisdiction

are taken to the Assessment Review Board and if either party is not satisfied with the decision, it may be appealed to the Ontario Municipal Board. Points of law (interpretations, proper application of legislation) that arise within such cases can be appealed to the Divisional Court if leave is granted. (See Section 95 of the Ontario Municipal Board Act in Appendix 1.)

2. All other questions of law such as assessability or liability to taxation must be taken under s. 50 of the Assessment Act to the District Court or to the Supreme Court of Ontario. Where an application is brought under Section 50, further appeal can be made to the Divisional Court without leave and from that court to the Court of Appeal and the Supreme Court of Canada but only with leave. The decision by a court to grant leave is based on a determination that there was an error in the decision and that it was an important error.

One should note that the Assessment Act does not give a complete picture of the appeal system. The various boards and courts involved are governed by numerous other statutes as well - notably the Statutory Powers Procedure Act. It should also be emphasized that the provisions in the Assessment Act deal only with those complaints or appeals that are actually heard by a board or court. Many complaints are handled quickly and informally through letters, telephone calls, or direct visits to the Regional Assessment Offices.

On the formal level, certain requirements must be observed - notably time limits and notice requirements as they are spelled out in the Act.

The question of jurisdiction was discussed in the following case:

QUANCE v. Thomas A. Ivey & Sons Limited. [1950]
O.R. 397. (C.A., May/50)



One question before the court was whether or not the Ontario Municipal Board had the jurisdiction to decide the liability of a given enterprise to business assessment. The court held that the question of liability to business assessment was a matter beyond the power of the Ontario Municipal Board or a similar body (such as the Assessment Review Board) to decide.

Jurisdiction to determine liability to business assessment was also discussed in the following case:

Re Regional Assessment Commissioner, Region No. 25 and Pamela Margaret MACLEAN. (C.Ct., Aug./77)
Objections were raised when the Assessment Review Board decided that a taxpayer was not liable to business assessment. The court held that this point of law was beyond the jurisdiction of the Assessment Review Board, and that the decision in question therefore had no effect.

Exemption from property taxation is another matter where jurisdiction has been an issue and was discussed in the following case:

Re DOWNTOWN Churchworkers Association of the Anglican Church of Canada, Diocese of Toronto, and the Regional Assessment Commissioner, Region No. 7 et al. 5 M.P.L.R. 261; 18 O.R. (2d) 302; 8 O.M.B.R. 249. (Div. Ct., Jan./78).
Further appeal dismissed by C.A. March/79; 28 O.R. (2d) 662.

Objections were raised when the Ontario Municipal Board refused to consider an appeal from the Assessment Review Board on a case that related to liability to property taxation. The court held that the question of exemption was a question of law and not within the scope of s. 39. The Assessment Review Board therefore should not have heard the case in the first place, and the Ontario Municipal Board was correct in refusing to consider the issue.

Authority of the Ontario Municipal Board to set aside an Assessment Review Board decision after determining that neither tribunal had the jurisdiction to deal with the issue was discussed in the following decision:





COMPLAINTS AND APPEALS

Complaints and Jurisdiction

REV.

Regional Assessment Commissioner, Region No. 29 v. Alexander B. MCLENNAN et al. (Div. Ct., April/87)
The court ruled that the Ontario Municipal Board did not have the authority to set aside a decision of the Assessment Review Board. However since the Ontario Municipal Board had the powers of an assessor and an appeal to the Ontario Municipal Board was a new trial, the Ontario Municipal Board could make a decision based on proper principles that would replace the decision of the Assessment Review Board.

Further mention of the Ontario Municipal Board will be made in the commentary on s. 47. Jurisdictional problems in assessment appeals are discussed further in the following cases:

BREDA, Gildo, Breda, Lino & Perehiniak, Janina v. Regional Assessment Commissioner, Region No. 14 et al. 6 O.M.B.R. 371. (O.M.B., Feb./77)
- Jurisdiction of O.M.B. to determine whether a property is properly classed as a farm

CANTEEN of Canada Limited v. the Regional Assessment Commissioner, Region No. 19 and the Corporation of the City of Hamilton. 7 O.M.B.R. 153. (O.M.B., Aug./77) - O.M.B. has jurisdiction to determine business classification

Re City of Hamilton and HAMILTON Harbour Commissioners et al. 20 M.P.L.R. 239. (H.C.J., Oct./82) - Ontario court has jurisdiction to hear assessment appeals of federal land

REV.

The Regional Assessment Commissioner Region No. 23 v. HARRINGTON Community Centre and Assessment Review Board. (Div. Ct., Nov./86) - A.R.B. has no jurisdiction on question of exemption

The Village of Delhi v. IMPERIAL Leaf Tobacco Company of Canada Limited. [1949] O.R. 636. (C.A., June/49) - C.A. has jurisdiction on question of liability to business assessment



COMPLAINTS AND APPEALS

Complaints and Jurisdiction

Re KITCHENER-Waterloo and North Waterloo Humane Society and City of Kitchener et al. [1973] 1 O.R. 490. (C.A., Nov./72) - Use of originating notice for appeals

MAITLAND Manor v. the Regional Assessment Commissioner, Region No. 24. (C.J., Feb./71)
- A.R.B. and county judge no jurisdiction on question of liability to business assessment for nursing home

REV.

Re Town of MILTON and Regional Assessment Commissioner, Region No. 15. 18 O.M.B.R. 314; 52 O.R. (2d) 734; 31 M.P.L.R. 129. (Div. Ct., Dec./85) - Jurisdiction of O.M.B. to hear appeal by municipality not represented at A.R.B.

Toronto v. OLYMPIA Edward Recreation Club Ltd. [1955] 3 D.L.R. 641. (S.C.C., May/55)
- Confirmed O.M.B. had no jurisdiction to determine question of assessability

REV.

588903 ONTARIO Limited v. Regional Assessment Commissioner, Region No. 26. (O.M.B., March/87)
- O.M.B. no jurisdiction on question of liability to business assessment

Re Regional Assessment Commissioner, Region No. 14 and the Township of VAUGHAN. 18 D.L.R. (3d) 409; [1971] 2 O.R. 545. (C.A., March/71)
- Scope of jurisdiction of county court

Re Township of MacDonald, Meredith and Aberdeen Additional and Camp WAKONDA of the Kiwanis Club of Lakeshore. 23 O.R. (2d) 373. (D.J., Jan./79)
- A.R.B. and county judge no jurisdiction on question of exemption

J.P. Simpson, Acting Commissioner, and the Corporation of the Town of Niagara-On-The-Lake v. Donald ZIRALDO. (C.J., July/77) - A.R.B. and county judge no jurisdiction on question of liability to business assessment



COMPLAINTS AND APPEALS

SUBJECT

Onus of Proof

ONUS OF
PROOF

The courts have established guidelines concerning who must bear the responsibility of proving to the relevant board or court that the assessment is or is not correct. The onus is on the person making the appeal to prove that there is something wrong with his assessment. Thus, if a property owner appeals against a market value assessment on the grounds that it is too high, then that property owner must present proof to show that the assessment is unfair. The assessor gives a preliminary explanation of how the assessment was arrived at, but the burden of proof ultimately is with the property owner: Why is he complaining, and what proof does he have that his complaints are justified? Consider the following case:

KANEFF Properties Ltd. v. Regional Assessment Commissioner, Region No. 16. (C.J., March/78)
The appellant taxpayer presented his estimates of the market value of the subject property using three valuation methods. The court examined the evidence presented by the appellant and by the assessor, and concluded that the appellant had not proved that the assessment was inequitable with respect to the assessment of similar property in the vicinity. The court therefore held that the assessment was correct as it stood.

The question of onus of proof was also discussed in the following cases:

Re CAMPEAU Developments Ltd. et al. and Regional Assessment Commissioner, Region No. 29 et al. 41 O.R. (2d) 39; 15 O.M.B.R. 44; 21 M.P.L.R. 273. (C.A., March/83)

CANADIAN Shipbuilding and Engineering Limited v. the Regional Assessment Commissioner, Region No. 16. (O.M.B., March/84)

DOWNTOWN Oshawa Property Owners' Association et al. v. Regional Assessment Commissioner, Region No. 13 and the Corporation of the City of Oshawa. (O.M.B., Nov./72)

Re EMPIRE Realty Co. Ltd. and Assessment Commissioner for Metropolitan Toronto et al. [1968] 2 O.R. 388; 69 D.L.R. (2d) 387. (C.A., May/68) (discussed earlier in Section 18)



COMPLAINTS AND APPEALS

SUBJECT

Notice Requirements

NOTICE
REQUIREMENTS

An appeal under s. 39 begins with a notice of complaint. Usually the submission of such a notice is a simple affair. A property owner who wishes to appeal an assessment fills out the tear-off portion of the Notice of Property Valuation and sends the form to the address provided, taking care that he or she is within the time limit. Any person who wishes to deviate from this process when lodging an appeal must be careful to observe the formalities required by s. 39. A complaint must give a name and address where notices can be sent to the person complaining. If the complaint concerns the assessment of another person, then that person must also be notified, and his or her mailing address must also be provided in the notice of complaint. Failure to comply with these requirements may stop a notice of complaint from having any effect, as the following case demonstrates:

Re Regional Assessment Commissioner and the Town of RICHMOND Hill and the Township of Vaughan.
20 D.L.R. (3d) 165; [1971] 3 O.R. 277. (C.A., June/71)

Attempts were made to lodge mass appeals by submitting notices complaining that all of the assessments in two municipalities were too high. The court held that in order to be proper, these notices of complaint would have had to list the names and addresses of each of the persons whose assessments were being appealed. This step had not been taken, and the appeals therefore had not been filed properly.

This next case also deals with notice requirements:

REV.

SABRO Ontario et al. v. the Regional Assessment Commissioner, Region No. 15. 31 M.P.L.R. 229; 18 O.M.B.R. 193. (O.M.B., Oct./85)
Confirmed by Div. Ct., May/87
The O.M.B. was presented with four factual scenarios concerning condominium assessment appeals:

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COMPLAINTS AND APPEALS

Notice Requirements

1. A tax agent initiating appeals on a number of condominium units without obtaining authorization from the individual unit owners or providing the individual unit owners with a notice of appeal within the statutory time limits.
2. A tax agent initiating appeals on the strength of an authorization from the condominium corporation, subsequently authorized by a condominium corporation by-law.
3. A tax agent acting on the strength of a condominium corporation by-law alone.
4. A tax agent acting under the authorization of a written agreement with the condominium corporation, later supported by an agreement on the part of the unit owners to pay for the agent's services.

In each of the four scenarios as presented, the notices required under ss.39(3) had not been sent. The Board therefore held that in each case, the appeal would not be valid.

The following cases also deal with whether the requirements for a notice of appeal have been met:

Re FLEMING and Smith Ltd. and the Regional Assessment Commissioner, Region No. 31 et al. 26 O.R. (2d) 691. (D.J., Nov./79)

SIMPSON'S Limited et al. v. the Regional Assessment Commissioner, Region No. 5. 18 O.M.B.R. 285. (O.M.B., Dec./85)

Re Regional Assessment Commissioner, Region No. 16 and J. STOLLAR Construction Ltd. [1972] 2 O.R. 352; 25 D.L.R. (3d) 512. (C.A., Feb./72)

REV.



COMPLAINTS AND APPEALS

Notice of Decision

NOTICE OF
DECISION

The provisions governing the notices of decision of the Assessment Review Board are not found in the Assessment Act but are in the Statutory Powers Procedure Act. Sections 17 and 18 of the Statutory Powers Procedure Act read as follows:

17. *A tribunal shall give its final decision and order, if any, in any proceedings in writing and shall give reasons in writing therefor if requested by a party.*
18. *A tribunal shall send by first class mail addressed to the parties to any proceedings who took part in the hearing, at their addresses last known to the tribunal, a copy of its final decision and order, if any, in the proceedings, together with the reasons therefor, where reasons have been given, and each party shall be deemed to have received a copy of the decision or order on the fifth day after the day of mailing unless the party did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the copy of the decision or order until a later date.*

The Assessment Review Board is a "tribunal" governed by these sections. It must therefore cause written notice of its decisions to be mailed to the parties involved in assessment appeals. If a party requests written reasons for a decision, then those reasons must also be mailed out to the parties.

The Ontario Municipal Board is also a tribunal but it is governed by Sections 75 and 76 of the Ontario Municipal Board Act with respect to notices and decisions.



COMPLAINTS AND APPEALS

Time Limits

TIME LIMITS Notices of complaint must be delivered or mailed within the time limit stipulated in ss.39(2) if they are to be considered. Subsection 30(5)(a) provides that a person receiving an assessment notice shall be notified of the last day for appealing the assessment. This time limit must be observed carefully. A taxpayer who wishes to lodge an appeal should send in his notice of complaint promptly. The courts are usually as liberal as they can be with respect to the interpretation of statutory time limits, but very strict once these limits actually have been breached. A notice of complaint that is sent in late has no effect at all and the appeal is not allowed. Note the following example:

Re Jack ROTBERG et al. and the Regional Assessment Commissioner, Region No. 20 and the City of Brantford. (C.Ct., Sept./81)

Property owners attempted to submit a late notice of complaint on the grounds that they had missed the time period because they had been on vacation when the assessment notice had been sent to them. The court held that the time limit was fixed and that no exception would be made in the instant case. The court also rejected the taxpayers' attempt to merge the proposed appeal with a previous year's appeal that had still been outstanding on the subject property at the time the new assessment notice had been mailed.

The rare instances in which the courts have allowed exceptions to the time limit for the mailing of notices of complaint have arisen when it could be shown that the relevant Notices of Property Valuation had not been mailed or delivered properly.

The next case (mentioned earlier in s. 30) also deals with the time limits for filing assessment appeals:

Re Ruth SMITH and the Corporation of the Town of Whitby. (O.M.B., April/63)



An attempt was made to lodge an assessment appeal at a date beyond the statutory time limit, on the argument that, due to a Post Office error, the taxpayer in question had not received an assessment notice in time to appeal properly. The O.M.B. held that the mere fact that a properly addressed notice was mailed constituted delivery under s. 30, and that the appeal could not be lodged.

The following case is also of interest:

The Corporation of the County of WENTWORTH v. the Corporation of the Town of Dundas. (C.Ct., Feb./64)

Section 51 is also important with respect to the subject of time limits.



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SECTION

COMPLAINTS AND APPEALS

SUBJECT

Revised Assessment Roll

ASSESSMENT *s.40.*
ROLL BINDING

The roll as finally revised by the Assessment Review Board and certified by the regional registrar shall, subject to subsections 36(5) and (6), be valid and bind all parties concerned, notwithstanding any defect or error committed in or with regard to such roll, or any defect, error or misstatement in the notice required by section 30 or the omission to deliver or transmit such notice, provided that the provisions of this section in so far as they relate to the omission to deliver or transmit such notice do not apply to any person who has given the assessment commissioner the notice provided for in subsection 30(4).

No cases or comments.

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SECTION

ASSESSMENT ROLL

SUBJECT

Evidence in Court

ROLL AS
EVIDENCE
IN COURT

s.41.

A copy of any assessment roll, or portion of any assessment roll, written or printed, and certified to be a true copy by the clerk of the municipality, shall be received as prima facie evidence in any court or tribunal without proof of the signature or the production of the original assessment roll of which such certified copy purports to be a copy, or a part thereof.

No cases or comments.

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SECTION

COMPLAINTS AND APPEALS

SUBJECT

Ontario Municipal Board

APPEAL FROM s.47.
A.R.B.

(1) *An appeal lies to the Ontario Municipal Board from the decision of the Assessment Review Board under section 39.*

TIME LIMIT

(2) *The party appealing shall, within twenty-one days of the mailing of the decision of the Assessment Review Board, deliver or mail to the regional registrar of the Assessment Review Board a notice of appeal accompanied by the fee prescribed by the Ontario Municipal Board under the Ontario Municipal Board Act.*

NOTICE OF
APPEAL

(3) *The regional registrar of the Assessment Review Board shall forthwith deliver or mail a copy of the notice of appeal to the other parties.*

(4) *The regional registrar shall forward to the Ontario Municipal Board the notice of appeal, the amount of the fee mentioned in subsection (2) and any other material in his possession necessary for the hearing of the appeal.*

NEW TRIAL

(5) *The appeal shall be by way of a new trial.*

ALTERATION OF
ROLL AFTER
APPEAL

(6) *If by the decision of the Ontario Municipal Board or by the decision on an appeal therefrom, it appears that any alteration should be made in the assessment roll respecting the assessment in question, the clerk of the municipality shall, except where an appeal from the decision is commenced, alter the assessment roll to give effect to the decision and shall write his name or initials against every alteration.*

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COMPLAINTS AND APPEALS

SUBJECT

Ontario Municipal Board

Under s. 47, an appeal can be made to the Ontario Municipal Board from a decision of the Assessment Review Board. The case law and commentary given concerning s. 39 with respect to jurisdiction, notice requirements and time limits are relevant to s. 47 as well. Also, under the Assessment Act, the Ontario Municipal Board deals with the same issues as that of the Assessment Review Board, namely:

- (a) the amount of an assessment;
- (b) a person incorrectly listed or excluded from the assessment rolls; or
- (c) an incorrect assignment of school support.

Subsection 47(5) provides that an appeal to the Ontario Municipal Board is by way of a new trial. This point was discussed in the following case (summarized earlier under s. 39):

REV.

Regional Assessment Commissioner, Region No. 29 v. Alexander B. MCLENNAN et al. (Div. Ct., April/87) Upon an appeal to the O.M.B., the O.M.B. must conduct a new trial and cannot simply set aside a decision of the A.R.B. The O.M.B. has the full power to review the original complaint as to the quantum of the assessment.

The following cases speak to issues associated with rights of appeal at the Ontario Municipal Board:

CONTINENTAL Insurance Co. et al. v. Regional Assessment Commissioner, Region No. 9 et al. 9 O.M.B.R. 401. (Div. Ct., May/79) - Discussed earlier under ss.18(1), (2)

Regional Assessment Commissioner, Region No. 12 v. MILLGATE Park Investments (No. 1). 14 O.M.B.R. 329. (O.M.B., Jan./83)

REV.

Re N.H.D. Developments Limited and Regional Assessment Commissioner, Region No. 11 et al. 30 O.R.(2d) 689; 11 O.M.B.R. 232; 118 D.L.R. (3d) 365. (Div. Ct., Oct./80)



Ontario
SECTION

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SUBJECT

COMPLAINTS AND APPEALS

Ontario Municipal Board

NAGILLAH Investments Limited v. the Regional
Assessment Commissioner, Region No. 12 and the
Corporation of the Borough of Etobicoke. 10
O.M.B.R. 125. (O.M.B., Feb./79)

REV.

WIDWORTHY Charitable Foundation v. the Regional
Assessment Commissioner, Region No. 9. (O.M.B.,
Feb./86)

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APPEAL PROCEDURE

SUBJECT

Application

ASSESSMENT
OPEN UPON
APPEAL

- s.48. (1) Upon an appeal on any ground against an assessment, the Assessment Review Board, Ontario Municipal Board or court, as the case may be, may reopen the whole question of the assessment so that omissions from, or errors in the assessment roll may be corrected, and the amount for which the assessment should be made, and the person or persons who should be assessed therefor may be placed upon the roll, and if necessary the roll of the municipality, even if returned as finally revised, may be opened so as to make it correct in accordance with the findings made on appeal.*
- (2) In determining the value at which any land shall be assessed, reference may be had to the value at which similar lands in the vicinity are assessed.*

Under ss.48(1), the whole question of the assessment quantum is open to review when an assessment is appealed. Note the following case (discussed earlier in the commentary on s. 18):



The Regional Assessment Commissioner, Region No. 21 v. B.F. Goodrich Canada Ltd. (O.M.B., May/81)
The owners of a tire manufacturing plant objected to the consideration, on appeal, of a building area that had been inadvertently omitted from assessment calculations prior to the lodging of the appeal. The O.M.B. held that ss.48(1) (then ss.64(1)) provided authority to deal with the assessment on the omitted building area. Various assessment methods were considered, and the cost approach was finally accepted for purposes of providing an assessment figure.

However, ss.48(2) only has application where there has been a proclamation under s. 70.

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APPEAL PROCEDURE

Application

The relevant boards and courts can use comparisons of property assessments to assist them in their investigations, as was done in the Fortney case, previously discussed in the commentary on the assessment of "Residential Properties" under s. 18:

Re Alexander and Bernice FORTNEY and the Regional Assessment Commissioner, Region No. 25 and the Township of Bentinck. (O.M.B., March/79)
When arriving at its decision with respect to the assessed value under s. 18, the Board accepted for consideration the use of comparable properties outside the subject municipality. The Board also emphasized that s. 48 merely allows the consideration of the assessed value of similar lands in the vicinity, whereas s. 65 requires such consideration.

The reasoning in the following cases also touched on the application of s. 48:

DRAU Realty Ltd. v. R.E. Timbs, Regional Assessment Commissioner, Region No. 23. (C.J., June/73)

REV.

Robert THOMPSON v. the Regional Assessment Commissioner, Region No. 25. (O.M.B., Jan. and Feb./87)



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APPEAL PROCEDURE

SUBJECT

Powers of Boards

POWERS OF
A.R.B. AND
O.M.B.

- s. 49. (1) Upon a complaint or appeal with respect to an assessment, the Assessment Review Board or Ontario Municipal Board may review the assessment and, for the purpose of such review, has all the powers and functions of the assessor in making an assessment, determination or decision under this Act, and any such assessment, determination or decision made on review by the Assessment Review Board or Ontario Municipal Board shall, except as provided in subsection (2), be deemed to be an assessment, determination or decision of the assessor and has the same force and effect.*
- (2) A decision of the Assessment Review Board or Ontario Municipal Board with regard to persons alleged to be wrongfully placed upon or omitted from the assessment roll or assessed at too high or too low a sum is final and binding unless appealed in accordance with the provisions of this Act or the Ontario Municipal Board Act.*
- (3) For greater certainty, it is hereby declared that the provisions of sections 39 and 47 respecting appeals are intended to establish machinery for the review of an assessment for the purpose of ensuring the administrative integrity of the assessment roll, and, except as provided in subsection (2), such provisions shall not be deemed to affect the right of any person to apply to a superior, county or district court for a judicial determination of any question relating to an assessment.*

For jurisdictional questions relating to s. 49, refer to the discussion of "Complaints and Jurisdiction" in the commentary on s. 39.

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SECTION

APPEAL PROCEDURE

SUBJECT

Originating Notice

APPLICATION TO COURT

s.50. (1) The municipal corporation, assessment commissioner or any person assessed may apply by originating notice to the Supreme Court or to the county court of the county in which the assessment is made for the determination of any question relating to the assessment, except a question as to persons alleged to be wrongly placed upon or omitted from the assessment roll, assessed at too high or too low a sum, or wrongly placed upon or omitted from the roll as a public or separate school supporter.

NOTIFIED PARTIES

(2) The persons to be served with notice under this section shall be the persons assessed in respect of the property relating to the assessment, the assessment commissioner and the clerk of the municipality affected by the assessment.

TIME LIMIT

(3) No originating notice shall be commenced except within the times for commencing an action or other proceeding set forth in section 51.

APPEAL TO DIVISIONAL COURT

(4) An appeal lies to the Divisional Court from the judgment of the Supreme Court or from the judgment of the county court.

NO DELAY TO FINAL REVISED ROLL

(5) The appeal from any judgment given by the Supreme Court or by a county court on an originating notice given under this section or the hearing or argument or other proceedings thereon shall not delay the final revision of the assessment roll, but when such appeal is finally determined and disposed of, the clerk of the municipality shall cause the proper entries to be made in the assessment roll to give effect to such final determination and disposition.

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APPEAL PROCEDURE

Originating Notice

DECISION IS
BINDING ON
A.R.B., O.M.B.

(6) Notwithstanding that a question of the assessment of any person is pending before the Assessment Review Board or the Ontario Municipal Board, the judgment of the Supreme Court, the county court or the Divisional Court shall be given effect to and is binding upon the Assessment Review Board and the Ontario Municipal Board.

See the commentary on s. 39, particularly the sections concerning "Complaints and Jurisdiction".

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SECTION

APPEAL PROCEDURE

SUBJECT

Limitation of Actions

LIMITATION
OF ACTIONS
IN COURT

s. 51.

No action or other proceeding, except an action or other proceeding brought by or on behalf of a municipality for the collection of arrears of taxes, shall be brought in court with respect to an assessment or taxes based thereon,

- (a) except within sixty days after the day upon which the assessment roll is required by law to be returned, or within sixty days after the return of the roll, in case the roll is not returned within the time fixed for that purpose;*
- (b) where a complaint with respect to the assessment is made to the Assessment Review Board, except within the time limited for appealing from the Assessment Review Board to the Ontario Municipal Board; and*
- (c) where an appeal is made from the decision of the Assessment Review Board to the Ontario Municipal Board, except within fifteen days after the date of the decision of the Ontario Municipal Board,*

provided, where an appeal is made to the Divisional Court, no action or other proceeding shall be brought in any other court with respect to the assessment.

For jurisdictional questions relating to s. 51, refer to the discussion of "Jurisdiction" in the commentary on s. 39. With respect to the time limits stipulated in s. 51, the following case is instructive:

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APPEAL PROCEDURE

SUBJECT

Limitation of Actions

Re ST. ANNE'S Tower Corp. of Toronto and City of Toronto. 51 D.L.R. (3d) 374; 5 O.R. (2d) 718. (C.A., Nov./74)

An appeal that a property owner was attempting to make on a court decision was lodged within the sixty day time limit specified in ss.51(a), but past the limit of paragraph (b). The court held that the time limits in s. 51 were to be liberally construed, and that ss.51(a) was not limited by the following time provisions. The property owner's appeal therefore had been lodged in time.

This next case dealt with an unusual set of circumstances, but again the court held that the time limits ought not to be too strictly construed:

Re CUNA of Ontario Credit Union Limited and the Corporation of the City of Burlington et al. (H.C.J., Oct./84)

Outstanding appeals dating from 1978, 1979, and 1980 with respect to the subject property were settled when a Supreme Court of Canada decision answered the question of law on which the appeals were based. A dispute arose, however, over the appeals for 1980 and 1981, because no formal notices of appeal had been filed for those years within the relevant time period. The court examined correspondence between the lawyers handling the case, and concluded that the lawyers for the credit union believed that the appeals were all in good order and "were lulled in a sense of security". The 1980 and 1981 appeals were to be accepted and treated similarly to the appeals for the earlier years.

The following cases speak to a similar issue with respect to the limits under s. 51:

BABCOCK and Wilcox Canada Limited v. Regional Assessment Commissioner for Assessment Region No. 21. (C.Ct., March/80)
Confirmed by Div. Ct., Feb./83.

Re The CANADIAN National Institute for the Blind and the Municipal Corporation of the City of Toronto. (C.A., Nov./70)

The discussion of "Time Limits" in the commentary on s. 39 should be consulted with respect to this topic.

REV.



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APPEAL PROCEDURE

SUBJECT

Alteration of Roll

ALTERATION s. 52.
OF ROLL

Where any part of an assessment is declared invalid or in error by the Supreme Court or a county court, the whole assessment is not thereby invalidated and the court may direct that the assessment roll be altered in accordance with its judgment and the clerk of the municipality concerned shall, where the judgment is not appealed, so alter the roll and shall write his name or initials against every alteration.

No cases or comments.

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SECTION

APPEAL PROCEDURE

SUBJECT

Limitation of Municipal Actions

LIMITATION s. 53.
OF MUNICIPAL
ACTIONS

No matter that could have been raised by way of complaint to the Assessment Review Board or in an action or other proceeding with respect to an assessment in a court within the times limited for bringing such complaint, action or other proceeding under this Act shall be raised by way of defence in any action or other proceeding brought by or on behalf of a municipality.

No cases or comments.

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SECTION

ALTERATIONS TO ASSESSMENT ROLL

SUBJECT

Business Assessment

ALTERATION
OF BUSINESS
ASSESSMENT

s. 54.

Any business assessment based on the assessed value of real property shall be altered in the assessment roll by the clerk of the municipality to conform with alterations made in the assessment roll to such real property assessment.

Where the assessed value of owner-occupied land is reduced, that reduced assessed value also applies to the business assessment, as stated in this next case (discussed earlier in Section 36):

TORONTO College Street v. City of Toronto. 43 O.R. (2d) 742; 24 M.P.L.R. 1. (H.C.J., Oct./83)
Even though the owner appealed only the realty assessment, the municipality was required to adjust the business assessment based on the assessed value determined by the O.M.B. where the property was entirely occupied by the owner.

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SECTION

EQUALIZED ASSESSMENT

SUBJECT

Determination and Review

EXPLANATION

s.55. (1) The Ministry shall examine the amounts of the assessments of rateable property in each municipality and locality on the last returned assessment roll of each municipality and locality and determine as nearly as may be what the total of the amounts of the assessment of such rateable property should be so that costs may be apportioned and grants provided on a basis which is just and equitable as between municipalities and localities.

EQUALIZATION FACTORS

(2) The amount so determined under subsection (1) is the equalized assessment of each municipality and locality and the equalization factor of a municipality or locality is the percentage that the total of the amounts of the assessments of rateable property of a municipality or locality is of the equalized assessment of the municipality or locality, but neither the equalized assessment nor equalization factor of a municipality or locality shall be taken into account in the assessment of any land except as provided in this or any other Act.

PUBLICATION OF FACTORS

(3) The equalized assessment and equalization factor of each municipality and locality shall be published in The Ontario Gazette in each year not later than the 15th day of July.

REVIEW BY O.M.B.

(4) On or before the 1st day of November in the year of publication under subsection (3), a municipality or locality may apply to the Ontario Municipal Board for a review of its equalized assessment and equalization factor and the Ministry may apply for a review of the equalized assessment and equalization factor of any municipality or locality and the applicant shall give notice in writing by registered mail to the secretary of the Board and to the assessment commissioner for the region in which the municipality or locality is situate.

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EQUALIZED ASSESSMENT

Determination and Review

- (5) Upon receipt of a notice of application for review under this section, the secretary of the Ontario Municipal Board shall arrange a time and place for hearing the application and shall send notice thereof by registered mail to the Ministry and to the clerk of the municipality or the secretary of each school board in the locality concerned at least fourteen days before the hearing.
- (6) If the equalized assessment and equalization factor under review are not just and equitable, the Ontario Municipal Board, upon the hearing of the application, shall determine a just and equitable equalized assessment and equalization factor.
- (7) repealed
- (8) The decision of the Ontario Municipal Board or an appeal therefrom on an application under this section does not affect the equalized assessment and equalization factor of a municipality or locality, as determined under subsection (1) or (2), for the purposes of any provision of any Act where equalized assessments or equalization factors are used in any determination and an appeal therefrom or a review thereof is provided.

No cases or comments.



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SECTION

EQUALIZED ASSESSMENT

SUBJECT

Adjustment

ALTERATION *s.56.*
OF MUNICIPAL
BOUNDARIES

Where at any time the boundaries of a municipality or locality are altered or a new municipality is erected, the Ontario Municipal Board shall adjust the equalized assessment determined under section 55 of the municipalities affected.

No cases or comments.

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SECTION

DISCLOSURE OF INFORMATION

SUBJECT

Penalty for Wrongful Disclosure

PENALTY

s. 57. (1) Every assessment commissioner or assessor or any person in the employ of a municipality who in the course of his duties acquires or has access to information furnished by any person under section 9 or 10 that relates in any way to the determination of the value of any real property or the amount of assessment thereof or to the determination of the amount of any business assessment, and who willfully discloses or permits to be disclosed any such information not required to be entered on the assessment roll to any other person not likewise entitled in the course of his duties to acquire or have access to the information, is guilty of an offence and on conviction is liable to a fine of not more than \$200, or to imprisonment for a term of not more than six months, or to both.

IN APPEAL
HEARING

(2) This section does not prevent disclosure of such information by any person when being examined as a witness in an assessment appeal or in an action or other proceeding in a court or in an arbitration.



A great deal of information collected by property assessors is confidential and must not be indiscriminately disclosed. The owner of a commercial property, for example, may be obligated to disclose to an assessor financing and rental information that he or she would not want passed on to a competitor.

Under s. 57, property assessors can be fined or even jailed if they disclose such information to persons not entitled to receive it. Subsection 57(2) stipulates that an assessor testifying in an assessment appeal, or court action is in a special situation, and need not fear responding to questions concerning the information gathered in the course of his duties.

The understandable emphasis on confidentiality and secrecy need not be interpreted in an extreme fashion, however, as the following case demonstrates:

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2299A (84-07)



DISCLOSURE OF INFORMATION

Penalty for Wrongful Disclosure

REV.

GIGLIO v. Regional Assessment Commissioner, Region 27. 17 O.M.B.R. 103. (O.M.B., Jan./85)

Upon hearing evidence concerning errors in the subject property's assessment and on the assessment of comparable properties, the Board decided that the subject assessment should be reduced. The Board went on, however, to order an award of costs to the property's owner, this order being made in view of the fact the Regional Assessment Commissioner had refused to co-operate in the appeal by reviewing the subject assessment with the owner. The Board observed:

"The Board does not feel that the provisions of Section 57 are so strict as to prevent the Regional Assessment Commissioner from allowing the owner or his counsel to see his own assessment card or to have the assessment of his own property properly and carefully explained to him once the appeal is properly launched."

The next case dealt with a narrower question, namely the proper limit of ss.57(2) with respect to disclosure of information that may be confidential:

THORNTOWN Properties et al. v. Regional Assessment Commissioner, Region No. 10 et al. 16 O.M.B.R. 112. (O.M.B., Feb./84)

The Assessment Commissioner objected to an assessor being compelled to produce, in an appeal, information some of which was of a confidential nature. The Board held that the assessor should proceed with the appeal hearing and object when confidential information was actually called upon, so that the Board could then consider each specification of information and rule on whether or not it should be disclosed.



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SECTION

DISCLOSURE OF INFORMATION

SUBJECT

Additional Penalty

ADDITIONAL
PENALTY

s.58.

In addition to the penalties and punishments provided for by this Act for a contravention of the provisions thereof, the person guilty of such contravention is liable to every person who is thereby injured for the damages sustained by such person by reason of such contravention.

No cases or comments.

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SECTION

MUNICIPAL ENACTMENTS

SUBJECT

Effect of Assessment Act

ASSESSMENT
ACT NOT
AFFECTING
MUNICIPAL
ENACTMENTS

s. 59.

This Act does not affect the terms of any agreement made with a municipal corporation, or any by-law heretofore or hereafter passed by a municipal council under any other Act for fixing the assessment of any property, or for commuting or otherwise relating to municipal taxation, but whenever in any Act of the Legislature or by any proclamation of the Lieutenant Governor in Council or by any valid by-law of a municipality heretofore passed or by any valid agreement heretofore entered into the assessment of the real and personal property of any person in a municipality is fixed at a certain amount for a period of years, unexpired at the time of the coming into force of this Act, or the taxes payable annually by any person in respect of the real and personal property are fixed at a stated amount during any such period, or the real and personal property of any person or any part thereof is exempt from municipal taxation in whole or in part for any such period, such fixed assessment or commutation of taxes or exemption shall be deemed to include any business assessment or other assessment and any taxes thereon in respect of the property or business mentioned in such Act, proclamation, by-law or agreement to which such person or the property of such person would otherwise be liable under this Act.

No cases or comments.

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PROCEEDINGS OR ACTIONS

SUBJECT

Time Limit on Saturday

SATURDAY
TIME LIMIT

s.60.

Where the municipal offices in a municipality are closed on Saturday and the time limited for any proceeding or for the doing of any things in such municipal offices under this Act expires or falls upon a Saturday, the time so limited shall extend to and the thing may be done on the day next following that is not a holiday.

No cases or comments.

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SECTION

COURT OF REVISION

SUBJECT

Reference in Other Acts

LOCAL
IMPROVEMENT
ACT, DRAINAGE
ACT

- s.67. (1) Where in any general or special Act, except the Local Improvement Act and the Drainage Act, reference is made to a court of revision, such reference shall be deemed to be a reference to the Assessment Review Board established under this Act.
- (2) Notwithstanding any general or special Act, any provision in any Act, except the Local Improvement Act and the Drainage Act, as to the constitution of a court of revision is repealed.

No cases or comments.

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SECTION

ASSESSMENT ROLL

SUBJECT

Years 1970 to 1974

ASSESSMENT s.62.
ROLL FROM
1970 TO
1974

Subject to the alterations, amendments and corrections authorized by this Act, for the purposes of any general or special Act, the assessment roll of every municipality prepared for the year 1970 for taxation in 1971 shall be the assessment roll of the municipality for taxation in the years 1971 to and including 1974 and the assessments of all real property as set forth on the 1970 assessment roll shall be the assessments of the real property and the assessment commissioner of a municipality shall not cause to be prepared a new assessment roll for the municipality until the year 1974 for taxation in 1975.

No cases or comments.

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SECTION

ASSESSMENT ROLL

SUBJECT

Return of and Alterations to
Roll from 1974

RETURN OF
ASSESSMENT
ROLL -
1974 TO
PRESENT

s.63. (1) *Subject to the other provisions of this Act and to the alterations, corrections, additions and amendments authorized by this Act, and for the purpose of any special or general Act, the assessment roll of a municipality to be returned in each year for taxation in the next following year shall be the assessment of all real property as set forth in the assessment roll returned in the immediately preceding year as amended, added to or otherwise altered up to the date when the assessment roll for taxation in the next following year is returned, provided that, where the assessor is of the opinion that an assessment to be shown on the assessment roll to be returned for the years after 1973 is inequitable with respect to the assessment of similar real property in the vicinity, the assessor may alter the value of the assessment to the extent necessary to make the assessment equitable with the assessment of such similar real property.*

REV.

Subsection 63(1) of the Assessment Act provides that the assessment roll is to remain the same from 1974 onwards, subject to alterations necessary to reduce inequities and such other changes as may be set out in legislation. This does not mean that there is an absolute ban on alterations to assessments. Consider the following case:

Re PEEL Condominium No. 57 et al. and Regional Assessment Commissioner, Region No. 15 et al. 26 M.P.L.R. 308; 16 O.M.B.R. 395; 47 O.R. (2d) 466. (Div. Ct., Sept./84)

Leave to appeal to C.A. refused, Oct./84
The market value of certain condominiums had decreased relative to the market value of single family homes. The assessments were appealed on the basis that subsection 63(1) directs the assessor to alter the assessments to make them equitable with the assessments of single-family homes. The court held that the assessment "freeze" was not absolute and that assessments of condominiums should be adjusted to make them at the same proportion of market value as single family residences (as directed by ss.65(2)). In other words, the assessor should alter the roll to correct inequities.

REV.

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ASSESSMENT ROLL

Return of and Alterations
to Roll from 1974

This next appeal (also discussed in the commentary on ss.65(1)) gives an example of the application of this reasoning to a situation in which changes in the real estate market had created an inequitable situation. A further appeal to the Court of Appeal was dismissed, and accordingly this decision stands:

The Regional Assessment Commissioner, Sudbury-Manitoulin, Region No. 30 v. JUPER Holdings Limited. (Div. Ct., May/83)
Confirmed by C.A., May/85

REV.

When the Ontario Municipal Board altered assessments on two commercial properties to allow for reductions in property value due to changes in the focus of the city (pedestrian traffic patterns, etc.), the Assessment Commissioner appealed the alteration on the argument that it was not permissible due to ss.63(1). The Divisional Court held that the freeze did not mean that "all assessments" were "frozen for all time", but rather that the purpose of the freeze was "to avoid shifting the tax burden from some types of property to other types of property". The Court held that the Board was correct. The Board or the assessors could alter assessments to reduce inequities.

The same reasoning was applied in the following case. Here, the alleged cause of inequity was depreciation and the court held that ss.63(1) did not prevent alteration to correct such inequity:

HORTON CBI Ltd. v. Regional Assessment Commissioner, Region No. 18 et al. 19 O.M.B.R. 174; 32 M.P.L.R. 36. (Div. Ct., March/86)
Leave to appeal to C.A. refused - April/86.

REV.

The owner of industrial property wished to introduce evidence to show that depreciation had lowered the property's value relative to other similar properties, but the O.M.B. refused to consider this evidence on the basis that the ss. 63(1) freeze prevented any alteration to allow for depreciation. The Divisional Court held that this refusal was unfounded. The assessor and the Board could and should have considered an allowance for depreciation if the assessment as it stood was inequitable.



ASSESSMENT ROLL

SUBJECT

Return of and Alterations
to Roll from 1974

The concern with equity expressed in the reasoning of these cases is the fundamental issue. In this next appeal, the question was whether or not the ss.63(1) "freeze" prevented changes in the apportionment of a property's assessment among the various tenants of that property:

REV.

Re K-MART Canada Ltd. and Regional Assessment
Commissioner, Region No. 23 et al. 41 O.R. (2d)
55; 22 M.P.L.R. 134. (C.A., March/83)

A company renting retail space in two shopping malls argued that its assigned portions of the malls' assessments were unfairly high for the space occupied. The court held that the assessment "freeze" did not prevent alterations to correct inequities in the apportionment of assessment.

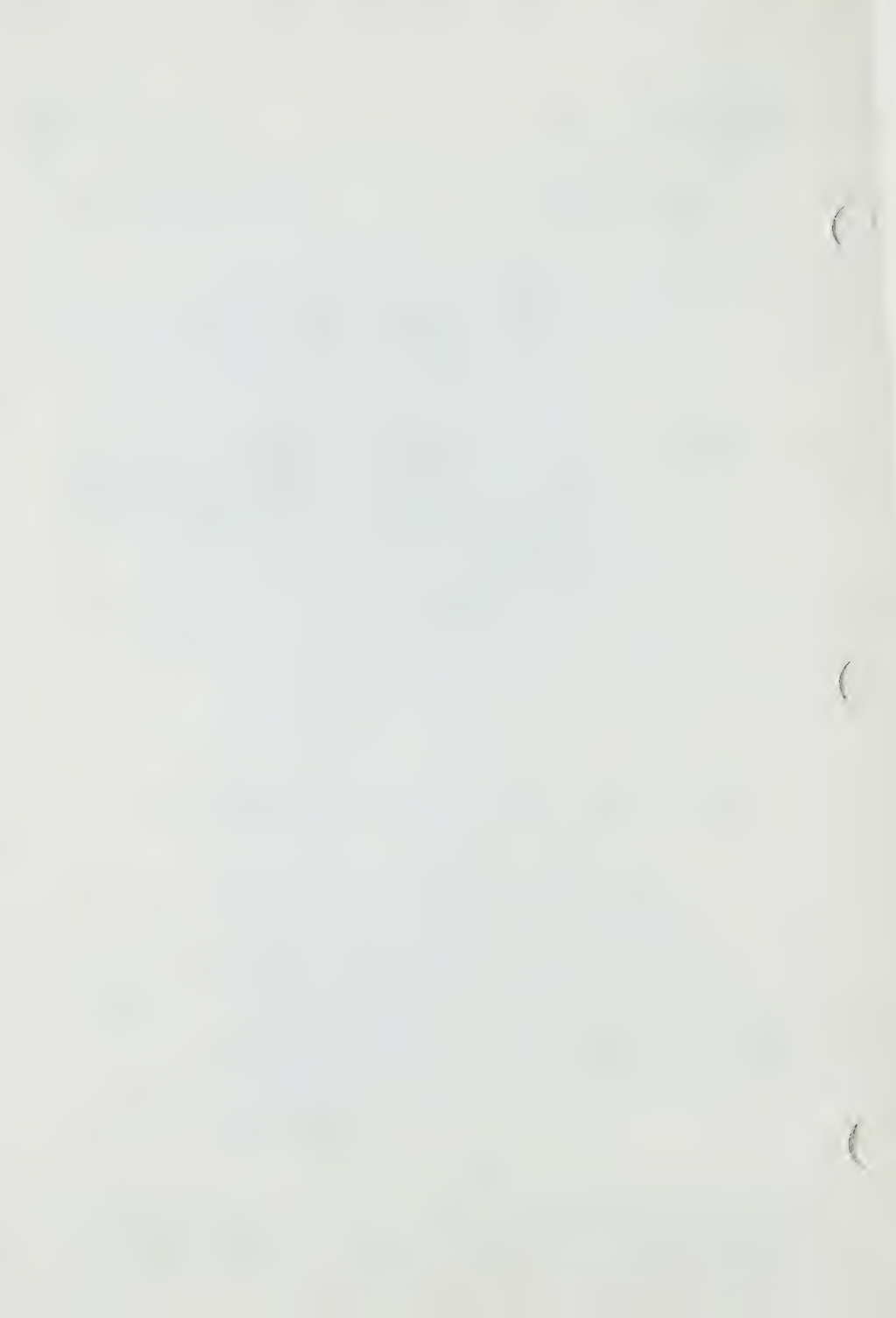
See the commentary under ss.65(1) for a discussion of "similar real property" and "vicinity".

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A GUIDE TO THE ASSESSMENT ACT

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SECTION

ASSESSMENT ROLL

SUBJECT

\$5000 Increase

\$5000 INCREASE
ADDED TO ROLL

(2) *Where the erection, alteration, enlargement or improvement of any building, structure, machinery, equipment or fixture or any portion thereof increases the value of any real property in a municipality or locality by at least \$5,000, and where such increase in value has not been, or is not liable to be, assessed pursuant to section 33, such increase in value shall be assessed and included in the assessment roll to be returned in the municipality or locality next after such increase comes to the attention of, and the amount thereof has been determined by, the assessment commissioner.*

Under ss.63(2), major structural changes such as new or enlarged buildings must result in increases in assessment. Provided that the change results in an increase in real property value at \$5,000 or more, this increase must be assessed and included in the assessment roll. Note that the \$5,000 minimum limit was set at \$2,500 prior to May 15, 1984. The following case dealt with the application of subsection 63(2) to assessments on newly constructed houses:

Re GEORGE Wimpey Canada Limited and the Regional Assessment Commissioner, Region No. 20 and the Corporation of the City of Brantford. 23 O.R. (2d) 303. (C.Ct., Dec./78)

The owner of a number of structurally completed but unoccupied houses argued that sections 33 and 63(2) of the Assessment Act should be interpreted so as to prevent the assessments on the land from being increased to reflect the houses' values until the buildings are actually occupied. The court held that under subsection 63(2), a newly constructed improvement valued at over \$2,500 could properly be reflected in a higher assessment.

The following case also considered the application of subsection 63(2) to assessments on new, unoccupied houses:

REV.

Regional Assessment Commissioner, Region No. 24 v. 122 BRAEMAR Cres., City of Stratford. (O.M.B., Oct./84)

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ASSESSMENT ROLL

\$5,000 Increase


Similar reasoning was used by the Board in the next case:

CANADIAN National Railway v. the Regional Assessment Commissioner, Region No. 9. (O.M.B., June/85)

REV.  The Board found that the assessor was justified in placing a partial assessment on L'Hotel, a part of the Canadian National Railway complex of the Convention Centre, under subsection 63(2), despite the fact that the structure was unfinished. However, the Board would not allow an additional assessment to be made in the appeal for another unfinished structure. The Board stated that, where it comes to the attention of the assessor, during preparation for an appeal, that there is a structure which has not been assessed, the assessment for that structure cannot be added to the current assessment but should be added to the following year's assessment roll.

Note that an addition or alteration that increases property value by less than the \$5,000 minimum may still be justified by other provisions in the Assessment Act. This point is demonstrated here:

Barry and Diana C. SHARP v. the Regional Assessment Commissioner, Region No. 9. (O.M.B., May/84)

REV.  The owners of a residential property had made changes to the property, but had spent less than \$2,500 making these changes. When the property assessment was increased, the owners argued that the increase was not justified because the amount spent was less than the minimum figure set out in ss.63(2). The court held that an inequitable situation had been demonstrated with respect to similar properties in the vicinity, and therefore the increase was justified under ss.63(1) if not under ss.63(2).

The following case deals with the method to be used in applying ss.63(2):



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SECTION

REASSESSMENT

SUBJECT

Within a Municipality

GENERAL
REASSESSMENT

s. 63. (3) *Where the Minister considers that, within any class or classes of real property in a municipality, any parcel or parcels of real property are assessed inequitably with respect to the assessment of an other parcel or parcels of real property of that class, he may, if so requested by a resolution of the council of such municipality, direct that such changes be made in the assessment to be contained in the assessment roll next to be returned in that municipality as will, in his opinion, eliminate or reduce inequalities in the assessment of any class or classes of real property, and the Minister may, for that purpose, make regulations,*

- (a) *prescribing standards and procedures to be used for the purpose of equalizing and making equitable the assessments of all real property belonging to the same class in the municipality;*
- (b) *prescribing the classes of real property into which the real property in the municipality shall be divided for the purpose of this subsection;*
- (c) *providing that any equalization of assessment pursuant to clause (a) shall not alter, as between classes of real property in the municipality, the relative level of assessment at market value previously existing between or among such classes, or providing that the equalization shall alter such levels of assessment at market value no more than is reasonably necessary to provide equitability of assessment within each class; or*



REASSESSMENT

Within a Municipality

(d) providing that an equalization pursuant to clause (a) shall not, except so far as is necessary to give effect to section 33, section 64 or subsection (2) of this section, alter the proportion that the municipal tax attributable to a class of real property for the year in which the equalization is directed to be made is of the total municipal tax for that year.



Under subsection 63(3) a municipal council can request that assessments be "equalized" within that municipality. The Minister of Revenue can then direct that assessment shall be changed so that all properties within the municipality are assessed at the same percentage of market value as other properties within the same property class. After such a reassessment, all farm properties (to take an example) will be assessed at the same percentage of their respective market values.

PROPERTY
CLASS
FACTORS

Property classes are defined and the corresponding class factors set out by regulation. A number of such regulations have been made following the request by municipalities for ss.63(3) reassessments.

The list of property classes has become fairly standard. Typically, there are five major property classes:



- Class 1 Properties comprising not more than six residential units.
- Class 2 Properties comprising seven or more residential units.
- Class 3 Commercial properties.
- Class 4 Industrial properties.
- Class 5 Farm properties.

A common question is: Which property class is appropriate for which property?

Prior to 1984, the following phrase was included in the regulations to assist in the assignment of property to its appropriate class:

"all real property in the municipality shall be allocated to that prescribed class of real property that most nearly describes the physical nature and characteristics of the real property".



REASSESSMENT

SUBJECT

Within a Municipality

This phrase has since been deleted because the courts were tending to stress the "physical" aspects of the property in determining the appropriate class.

However, the following case dealt with the pre-1984 wording of the regulation and based its decision on the overall nature and characteristics of the property:

MULTI-
RESIDENTIAL
PROPERTIES

Re RUSS Howald Construction Limited and Regional Assessment Commissioner, Region No. 21. (C.A., March/87)

At issue in this case was the class factor which should be applied to a property containing 28 semi-detached rental units in 14 buildings under one ownership. The court stated that before property can be allocated to any of the classes provided for in the regulation, one must first identify the property or parcel of land to be allocated. The class factor is applied to the entire parcel, or property, and not to some part or parts of it which are arbitrarily created on the basis of the number of buildings situated on it. The court therefore restored the O.M.B. decision that the project was one "property" and should have the higher Class 2 Factor applied.

REV.

In the following case, a property owner tried to argue that a large, multi-unit residential complex had been assessed in the wrong property class:

The Regional Assessment Commissioner, Region No. 23 v. QUOTINE Management Services Ltd. et al. (O.M.B., April/82)

The owner of a number of buildings, each containing several residential units, argued that each building should have been separately reassessed under subsection 63(3). If this had been done, the property would have a lower assessed value because the class factor for properties with 3 to 6 units was lower than the multi-residential class factor. The court held that because the buildings were all on one parcel of land, the assessment of the whole complex under the multi-residential/townhouse class was correct.



REASSESSMENT

Within a Municipality

Note that the nature of a property may be such that a different result would be more appropriate, as was found in this next case:

The Regional Assessment Commissioner, Region No. 21 v. 397298 ONTARIO Limited et al. 12 O.M.B.R. 77. (O.M.B., Dec./80)

Ninety eight rental housing units were divided by streets and driveways into six- and eight-unit blocks. The Board decided that given the physical characteristics of the units, the separate blocks of residences should be separately assessed. The various blocks of units were accordingly assessed at the two different factors - or percentages of market value - appropriate to classes dealing with "not more than six" or "seven or more" residential units.

REV.

The above noted cases have discussed class factors in relation to multi-residential properties. The following cases also considered this same issue:

The Regional Assessment Commissioner, Region No. 21 v. Joaquim BATISTA et al. (O.M.B., Dec./80)
- Class ratio to be applied to eight-unit row housing project

REV.

BENART Homes Ltd. v. the Assessment Commissioner, Region No. 6. (O.M.B., July/84)
- Class ratio to be applied to row housing development

REV.

Re DICENZO Construction Co. Ltd. and the Regional Assessment Commissioner, Region No. 19 et al. 33 M.P.L.R. 1; 54 O.R. (2d) 705. (H.C.J., June/86)
- Class ratio to be applied to townhouses

REV.

HALAM Park Developments Limited v. Regional Assessment Commissioner, Region No. 19 et al. (O.M.B., Apr./83)
Leave to appeal to Div. Ct. refused-May/83
- Class ratio to be applied to townhouses constructed on a former plan of subdivision



REASSESSMENT

Within a Municipality

RECREATIONAL
PROPERTIES

The question of class factors has not been confined to multi-residential properties. The following case dealt with a recreational property and demonstrates that the physical characteristics of a property are not the only factors to be considered:

INGERSOLL District Curling Club v. Regional Assessment Commissioner, No. 23. (O.M.B., June/83)

A curling club had been assessed using the industrial class factor because of the type of construction of the building. The Board ruled that in determining the proper class factor "consideration must be given not only to the 'bricks and mortar' but to the use of the land and buildings". In this case, the true nature and character of the property was recreational.

The following cases also consider the correct class ratio to be applied to a recreational property:

REV.

BRITANNIA Yacht Club Incorporated v. the Regional Assessment Commissioner, Region No. 3. (O.M.B., Dec./82) - Property class appropriate to a yacht club

REV.

Charles and Mary REAUME et al. v. the Regional Assessment Commissioner, Region Number 26. (O.M.B., March/85) - Class factor to be applied to hunting and trapping club

COMMERCIAL/
INDUSTRIAL
PROPERTIES

This next case is also of interest, but once again the old regulatory wording was important in the reasoning. This case is presently under appeal:

PETERBOROUGH Lumber Limited v. the Regional Assessment Commissioner, Region No. 7. (O.M.B., Jan./84 and May/85)

REV.

The owners of a lumber store situated on industrially-zoned land objected to the assessment of this store under the industrial, rather than commercial class. The Board held that zoning was only one of the factors to be considered when determining property class and that the commercial class would be more appropriate in view of the subject property's characteristics and use. A re-calculation of assessment within the commercial classification was ordered.



REASSESSMENT

SUBJECT

Within a Municipality

The following case considered the use of the property in determining the class factor to be applied:

JAMES River Marathon Ltd. v. the Regional Assessment Commissioner, Region No. 32. (O.M.B., July/86)

REV.

The subject property was situated on land adjacent to the appellant's mill site but had a separate deed, roll number and commercial zoning. The Board agreed with the assessor's use of the industrial factor rather than the lower commercial factor on this property because it was an integral part of the appellant's mill operation.

The issue of property class with regard to commercial/industrial properties was also discussed in the following cases:

Regional Assessment Commissioner, Region No. 2 v. BROCKVILLE Cooperative Association. (O.M.B., Sept./83) - Class ratio to be applied to multi-use property

REV.

MACK Canada Inc. v. the Regional Assessment Commissioner, Region No. 19. (O.M.B., Feb./86)
- Property class appropriate to a truck servicing building

SPLIT
FACTORS

Problems sometimes occur when a property has more than one use. The question that arises is whether the assessment should fall entirely within one property class, or be split up to reflect the different uses of the property. Court and O.M.B. decisions have been somewhat divided on this issue. The Ontario High Court of Justice dealt with the problem in the following case, but the reasoning used was based once again on the old regulatory wording:

REV.

MONARCH Construction Limited v. City of Hamilton et al. 31 M.P.L.R. 62; 51 O.R. (2d) 712. (H.C.J., Sept./85)

The Court held that, following the wording of the appropriate regulation, the assessment on a large, mixed-use property could not be split into the commercial and residential classes, but had to be calculated in the one single "prescribed class" appropriate to its characteristics.



REASSESSMENT

SUBJECT

Within a Municipality

Other decisions with respect to split or multiple-use properties seem to have shown a similar trend toward trying to fit a given property into one main class rather than splitting the assessment into two or more classes. The reasoning in this next O.M.B. decision serves as an example:

The Regional Assessment Commissioner, Region No. 20 v. Russell E. MCKAY et al. (O.M.B., Nov./81)
The subject property consisted of an automobile service centre, and included a residential dwelling. The owners argued that separate portions of the assessment (commercial and residential) should be calculated within the property classes appropriate to their use. The Board held that such a split would be improper in light of the wording of the relevant regulation. Since the preponderant use of the property was commercial, placing the property into the commercial class was correct.

The following case, however, provides an example of circumstances in which the board did split the assessment into different property classes. Whether or not the new regulatory wording produces more cases along similar lines remains to be seen:

The Regional Assessment Commissioner, Region No. 19 v. George E. CAREY et al. (O.M.B., Feb./86)
The use of the subject property was split up into commercial, industrial, farm and residential portions, but the industrial class rate was applied to the total assessment. The property owner argued that the assessment calculation should be split up into various property classes. The reasoning in the Monarch Construction case (noted above) was held to be inapplicable due to the change in regulatory wording. The Board decided that in order to achieve equity in assessment, the different property components - residential, commercial, etc. - would have to be assessed in different property classes.

The use of split factors was also considered in the following cases:

REV.



REASSESSMENT

Within a Municipality

REV.

HAMILTON Builders Supply Ltd. v. Regional Assessment Commissioner, Region No. 19. (O.M.B., Oct./84) - Split use property (farm, commercial, industrial and residential)

Regional Assessment Commissioner, Region No. 23 v. KIRKLAND. 14 O.M.B.R. 501. (O.M.B., Jan./83)
- Split use property (industrial and residential)

REV.

The Regional Assessment Commissioner, Region No. 19 v. John MOLNAR et al. (O.M.B., April/82)
- Split use property (commercial and residential)

REV.

The Regional Assessment Commissioner, Region No. 18 v. Robert B. and Katherine C. MORNINGSTAR. (O.M.B., Feb./85) - Split use property (farm and residential)

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SECTION

INCREASE IN ASSESSMENT

SUBJECT

\$5000 Market Value

NO SUPPLEMENTARY s.64.
ASSESSMENT UNTIL
INCREASE AT
LEAST \$5000

No amendment shall be made to the assessment or collector's roll pursuant to clause 33 (a) until the cumulative value of the increase since the 23rd day of July, 1971, is at least in the sum of \$5,000 at market value or, if the assessment in the vicinity is at less than market value, at an equivalent rate.

No cases or comments.

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SECTION

APPEALS - BASIC GUIDELINES

SUBJECT

Basis of Comparison - Similar
Properties/Vicinity

REFERENCE TO
SIMILAR
PROPERTIES
IN VICINITY

s.65. (1) The Assessment Review Board, Ontario Municipal Board or any court, in determining the value at which any real property shall be assessed in any complaint, appeal, proceeding or action, shall have reference to the value at which similar real property in the vicinity is assessed, and the amount of any assessment of real property shall not be altered unless the Assessment Review Board, Ontario Municipal Board or court is satisfied that the assessment is inequitable with respect to the assessment of similar real property in the vicinity, and in that event the assessment of the real property shall not be altered to any greater extent than is necessary to make the assessment equitable with the assessment of such similar real property.

INTRODUCTION

Subsection 65(1) is of central importance with respect to assessment appeals in Ontario. Its provisions are mandatory, not permissive. When a given property assessment is being reviewed, the appeal bodies "shall" have reference to assessments on similar properties in the vicinity. The courts' interpretation of ss.65(1) is important in that three key words in the section, "similar", "vicinity", and "equitable", are not defined in the Act.



Under ss.65(1), a Board or court considering an appeal with respect to quantum (i.e. whether an assessment is too high or too low) "shall have reference" to assessments on "similar real property" in the "vicinity". The Board or court is directed to alter the assessment under appeal only enough to make it "equitable" with respect to that similar real property.

Section 18 and the commentary associated with it should be noted in conjunction with this portion of the Guide. Section 18 deals with the basis for assessment or valuation of real property.

This commentary on ss.65(1) will now deal first with the interpretation of key words and phrases in ss.65(1), and will then set out some specific examples of the application of this subsection to assessments on properties of various types.



APPEALS - BASIC GUIDELINES

SUBJECT

Basis of Comparison - Similar
Properties/Vicinity

"SHALL HAVE
REFERENCE"



As noted, the provisions of ss.65(1) are mandatory. The court or tribunal "shall" (not "may") consider available comparables when making their decisions. If no inequity can be demonstrated between a subject property's assessment and the assessments on comparable properties, then no adjustments in the assessment are to be made. The following case exemplifies this point:

RIVER Dell Holdings Ltd. v. Regional Assessment Commissioner, Region No. 19 et al. 14 O.M.B.R. 463. (Div. Ct., Jan./82)

A shopping centre owner complained that his property's assessment was too high, but based his entire argument on the property's purchase price. The court held that since no evidence had been presented with respect to inequity in comparison with other assessments, the appeal had to fail and the original assessment had to stand.

The following cases speak to the mandatory nature of ss.65(1):

KEVIN Mullins Limited et al. v. the Regional Assessment Commissioner, Region No. 1 and the Corporation of the City of Cornwall. (O.M.B., Sept./78)

The Regional Assessment Commissioner, Region No. 27 v. LAFORET et al. (O.M.B., Feb./85)

Town of RICHMOND Hill v. 36 Fern Avenue et al. (O.M.B., April/85 and May/85)

The Regional Assessment Commissioner, Region No. 19 v. WESCO Construction Limited. (O.M.B., Jan./85)

WESTINGHOUSE Canada Incorporated v. Regional Assessment Commissioner, Region No. 19. 17 O.M.B.R. 266. (Div. Ct., April/85)

"SIMILAR
REAL
PROPERTY"



The issue of whether or not a property is "similar" to a given subject property may depend on a number of factors, such as physical comparability, building age, and the general use to which the properties are put. Similarity is a question of fact, not of law, to be determined in the context of each individual case. The Supreme Court of Canada dealt with this issue in the following case:



Regional Assessment Commissioner, Region No. 13 et al. v. DOWNTOWN Oshawa Property Owners' Association et al. 88 D.L.R. (3d) 303; 8 O.M.B.R. 447. (S.C.C., June/78)

The owners of a number of stores in a central downtown area argued that the assessments on their properties were too high compared to the assessment on a nearby shopping mall. The O.M.B. considered the differences in age, physical characteristics, and owner-tenancy set-up between the subject properties and the shopping mall, and decided that the mall could not be considered to be "similar" to the stores in question. On appeal to the Supreme Court of Canada, it was held that this was a proper finding of fact on the part of the O.M.B. and was a correct application of ss.65(1) (then ss.90(1)).

In each case, the Board or court will make a specific decision as to what properties are "similar" to the subject. Comparable properties presented in an assessment appeal are most persuasive, of course, if they very closely resemble one another. This next case provides an example of an attempt to argue an appeal on the basis of "similar" properties that were not, in the view of the O.M.B., very much alike:

George E. FISK v. the Regional Assessment Commissioner, Region No. 3. (O.M.B., March/84)
A property owner sought a reduced assessment, basing his argument partly on a comparison between his property and other homes of various sizes, types of construction, etc. The Board specifically rejected the homeowner's view that "a house is a house" and held that not all houses were "similar". Comparison of the subject assessment with assessments on houses of similar size and construction type (i.e. bungalow), all of which had sold within a narrow time period, showed the subject property to be equitably assessed. The assessment therefore was not reduced.

The following case follows much the same reasoning with respect to what "similar" means in ss.65(1):

Anthony HOLLINRAKE v. the Regional Assessment Commissioner, Region No. 9. (O.M.B., April/84)



APPEALS - BASIC GUIDELINES

SUBJECT

Basis of Comparison - Similar
Properties/Vicinity

The concept of what constitutes a property "similar" to another is discussed later in this commentary in the sections dealing with examples related to specific property types.

"IN THE
VICINITY"

REV.

Properties not in the "vicinity" of a property under appeal are not acceptable for comparison under ss.65(1). Once again, the concept of "vicinity" is not defined but is interpreted by the courts according to the facts of each case. A "vicinity" can be one street in one case, a small neighbourhood in another case, and an entire municipality in yet another case. Vicinity tends to depend on the real property market in which location can play a large part. The reasoning of the District Court Judge in the following appeal is often cited with approval by the Ontario Municipal Board as taking a good practical approach to the meaning of "vicinity" in ss.65(1):

Margaret FOGH-DOHMSMIDT v. Regional Assessment Commissioner, Region No. 32 et al. 16 M.P.L.R. 199. (D.J., April/81)

Confirmed by O.M.B., Nov./81

A homeowner appealed the assessment on her house, saying that it was too high compared to assessments on properties in nearby, but separate, subdivisions. The Judge held that if not enough comparable (or "similar") properties could be found in the immediate neighbourhood, then a court or board would have to extend the "vicinity" for comparisons, but not so far as to undermine the reliability of the comparisons. In the instant case, the comparable properties in the nearby subdivisions were not too distant, and the subject assessment was therefore reduced.

The O.M.B. in this next case used similar reasoning in an appeal on an industrial property:

The Regional Assessment Commissioner, Region No. 21 and the Corporation of the City of Waterloo v. CARLING-O'Keefe Brewers of Canada Limited. (O.M.B., March/79)



The argument that a brewery's original assessment was correct was based on comparisons with the assessments of similar industrial properties in the municipality. The representative of the brewery's owner used comparisons with assessments of properties outside the municipality as the basis for an argument in favour of an assessment reduction. The Board held that because the comparisons within the municipality disclosed no inequity, there was no need to refer to more distant properties for comparison. The original assessment was held to be correct.

As with the idea of "similar" properties, "vicinity" is often best kept to narrow limits for the purposes of determining comparability, as the following case demonstrates:

The Regional Assessment Commissioner, Region No. 1 v. Rick GIROUX. (O.M.B., March/85)

A service station owner argued for a reduced assessment on the basis of assessments on other service stations spread through a wide area in the municipality. However, comparisons between the assessment on his property and assessments on a number of other service stations that were all on the same main street showed no inequity. The subject assessment therefore was not reduced.

The issue of "vicinity" in a municipality that has been reassessed under subsection 63(3) was considered by the court in this next case:

Regional Assessment Commissioner, Region No. 3 et al. v. Donald GRAHAM et al. (H.C.J., May/87)

Under the provisions of ss.65(2) dealing with the assessment of condominiums, "vicinity" has generally been accepted to be a smaller area than an entire municipality. However, where an equalized assessment program has been implemented under ss.63(3), "vicinity" has been defined by the courts to mean the whole municipality. The court ruled that in a ss.63(3) municipality, "vicinity" in ss.65(2) must be interpreted to mean municipality because "if the proportion of market value used to arrive at an assessed value for a particular class of property within the municipality were to vary between vicinities, s.63(3) would not only be violated, but its entire purpose would be defeated".



APPEALS - BASIC GUIDELINES

SUBJECT

Basis of Comparison - Similar
Properties/Vicinity

The question of vicinity is also discussed later in this commentary with respect to specific property examples.

"EQUITABLE"



Following ss.65(1), assessments are to be adjusted only enough to make them "equitable" with assessments on "similar real property in the vicinity". Words such as "equitable" have a number of legal meanings, but in the context of ss.65(1), a good start can be made on the idea by thinking of an "equitable" assessment as one that is "just" or "fair". On appeal, assessments are to be adjusted so that they are "fair" in relation to one another. It follows that relative comparisons of assessments, market values, and other factors will assist in determining the fairness of the assessment under appeal. Any determination of fairness or equity in assessment must, however, be made within the context of the earlier discussions concerning "similarity" and "vicinity". These three concepts are all interrelated.

That being said, market value evidence may have weight in an appeal, as the following case demonstrates:

The Region Assessment Commissioner, Region No. 9 v. 25 GRANDVIEW Avenue. (O.M.B., June/84)
On hearing an appeal concerning a homeowner's assessment, the O.M.B. rejected the assessor's use of straight square footage comparisons and of comparison between renovated and unrenovated properties. The Board held that the preferred method of establishing equity was analysis of sales information concerning similar real property in the vicinity. This analysis yielded an assessment to sale price ratio which, multiplied by the estimated market value of the homeowner's property, produced an assessment level that the Board found to be equitable.

Thus market value, or the ratio of assessment to market value, can be important in determining what is an "equitable" assessment. As the Court of Appeal pointed out in this next case, however, an accurate reflection of the market is not always necessary for the production of an equitable assessment:



Re CAMPEAU Developments Ltd. et al. and Regional Assessment Commissioner, Region No. 29 et al. 41 O.R. (2d) 39; 21 M.P.L.R. 273; 15 O.M.B.R. 44. (C.A., March/83)

The market value of a shopping centre had been determined by capitalizing the income from rentals. The same capitalization rates had been applied to the subject property and to the other two shopping centres in the municipality. The ratepayers argued that an incorrect capitalization rate had been applied, thus resulting in an incorrect assessment. However, the Court held that "no inequity with respect to the assessment of similar real property in the vicinity results if the assessor has used an equally wrong capitalization rate when calculating the value of the similar real property". Except for an adjustment on the assessment of excess land, the assessment was confirmed.

Note that the court on the above-noted case did not state that the question of market value could be ignored, but only that an incorrect rate applied equally to everyone could produce an equitable result. Assessments had been kept in proportion with one another.

The following appeal, also discussed in the commentary on ss.63(1), deals with an important issue, namely whether current market conditions and economic factors should be taken into consideration when determining the fairness of an assessment under appeal:

The Regional Assessment Commissioner, Sudbury-Manitoulin, Region No. 30 v. JUPER Holdings Limited. (Div. Ct., May/83)

Confirmed by C.A., May/85

The O.M.B. lowered the assessment on two commercial properties to allow for a market value decline resulting from a shift in the commercial focus within the downtown core of the city in which the properties were located. On further appeal, the Divisional Court held that this action was justified to reduce an inequity in assessment, and was not prevented by the provisions of ss.65(1) (then s.90).



SUBJECT

APPEALS - BASIC GUIDELINES

Basis of Comparison - Similar
Properties/Vicinity

This next case also deals with a question of equity in an assessment appeal:

HORTON CBI Ltd. v. Regional Assessment Commissioner, Region No. 18 et al. 19 O.M.B.R. 174; 32 M.P.L.R. 36. (Div. Ct., March/86)
Leave to appeal to C.A. refused, April/86
Evidence was presented to the O.M.B. supporting the argument that depreciation on certain industrial properties had created an inequitable assessment situation. The Board refused to consider this argument on the grounds that no factual circumstances justified a change in assessment. The Divisional Court held on appeal that this refusal was unfounded, and the assessor and the Board should have addressed the question of whether or not an inequitable situation existed in the context of current economic conditions.

The following case deals with assessment to market value ratios and demonstrates the discretion a Board has in determining what would be a fair or reasonable approach to establishing equity in the circumstances at hand:

Re REGAL Stationery Co. Ltd. and Regional Assessment Commissioner, Region No. 11. 48 O.R. (2d) 152; 27 M.P.L.R. 239; 16 O.M.B.R. 489. (Div. Ct., Oct./84)
The ratio of the assessment to 1975 estimated market value for a production plant was compared to the assessment to 1975 value ratios of 26 similar properties in the vicinity. The O.M.B. ruled that the assessment was correct because the ratio for the subject property fell within an acceptable range from the median ratio for the 26 properties. In addition the O.M.B. held that, when determining the equity of an assessment, the assessments of all similar properties should be considered, even if they were under appeal. On appeal, the Divisional Court held that the Board's decision was a factual decision properly made because it had made reference to the equity of the assessment.



APPEALS - BASIC GUIDELINES

Basis of Comparison - Similar
Properties/Vicinity

Note that the Court in the foregoing case held that equity in assessment was essentially a question of fact, to be determined by means appropriate to the individual appeal. Note also that the Court found that the Board did not have to exclude certain properties from its calculations, but did not imply that the Board was obligated to include all properties in its calculations. The Board has discretion in this area as this next case demonstrates once again:

Re Regional Assessment Commissioner, Region No. 10 and ORTHO Pharmaceutical (Canada) Ltd. et al. 53 O.R. (2d) 88. (Div. Ct., Dec./85)
When setting the assessment for the subject industrial property, the O.M.B. excluded from its calculations assessments on certain properties that were under appeal. The Divisional Court held that this decision was acceptable. The Board was obligated to have reference to assessments on comparable properties, but it did not have to include all such properties in its analysis if it had a reasonable basis for acting otherwise.

The following case deals with a narrower point, namely that equity in assessment must be determined as at a certain time, and with reference to properties that are actually in existence when the roll is returned:

The 101 MALL Ltd. v. Regional Assessment Commissioner, Region No. 29 et al. 11 O.M.B.R. 49. (Div. Ct., May/80)

It was argued that the assessment on a shopping mall was too high compared to the assessments on two other malls that had been constructed after the relevant assessment roll had been returned to the municipality, but before the case was heard before the Ontario Municipal Board. The Divisional Court upheld the Board's decision. The court reasoned that since the two nearby malls had not existed when the roll was returned, they could not be considered as comparable properties under ss.65(1). The assessment was confirmed.

This next case demonstrates the fact that ss.65(1), and the appeal system in general, work both ways. An "equitable" assessment may be at a higher level than that originally placed on a property:



APPEALS - BASIC GUIDELINES

Basis of Comparison - Similar
Properties/Vicinity

Henry CHABROWSKI et al. v. the Regional Assessment
Commissioner, Region No. 14 et al. 6 O.M.B.R.
172. (O.M.B., Sept./76)

When taxpayers sought a reduction on the grounds
that their property was assessed at a higher level
than nearby farms, it was found that the major
part of their property was not in fact being
farmed at all. Comparable uncultivated properties
were being assessed at a higher "residential" rate
and, while acknowledging the taxpayers' distress
with the result, the Board confirmed that the
assessment would have to be set at the higher
level.

The following cases also speak to the question of
equity in the context of ss.65(1):

CANADIAN Shipbuilding and Engineering Limited v.
the Regional Assessment Commissioner, Region No.
16. (O.M.B., March/84)
(Summarized later in the portion of commentary
relating to industrial properties)

CARDINAL Plaza Limited et al. v. the Regional
Assessment Commissioner, Region No. 19 et al. 49
O.R. (2d) 161; 17 O.M.B.R. 69. (C.A., Dec./84)

GRAFTON Frazer Inc. v. the Regional Assessment
Commissioner, Region No. 9. (O.M.B., Feb./85)

HALIBURTON Forest & Wildlife Reserve Ltd. v.
Regional Assessment Commissioner, Region No. 7.
(O.M.B., March/85)

Regional Assessment Commissioner, Region No. 18 v.
HAYES Dana Inc. (O.M.B., Jan./85)

Re K-MART Canada Ltd. and Regional Assessment
Commissioner, Region No. 23 et al. 41 O.R. (2d)
55; 22 M.P.L.R. 134. (C.A., March/83)

REGIONAL Shopping Centres Ltd. v. the Regional
Assessment Commissioner, Region No. 20. (O.M.B..
Jan. and March/85)

Re WENTWORTH Condominium Corp. No. 46 et al. and
Regional Assessment Officer, Region No. 19. 54
O.R. (2d) 642. (H.C.J., May/86)



APPEALS - BASIC GUIDELINES

Basis of Comparison - Similar
Properties/Vicinity

YORK Condominium Corporation No. 202 v. Regional
Assessment Commissioner, Region 12. 16 O.M.B.R.
378. (O.M.B., Nov./84)

Re ZAIDAN Group Ltd. et al. and Regional
Assessment Commissioner, Region No. 23. 48 O.R.
(2d) 385; 17 O.M.B.R. 14. (Div. Ct., Nov./84)

APPEALS BY
PROPERTY
TYPES

As noted, the remainder of this commentary is arranged according to specific examples of the application of ss.65(1) to various property types. The commentary on s. 18 and the valuation methods described in that commentary should be noted again.

RESIDENTIAL
PROPERTIES

Appeals concerning residential properties, like appeals on property assessments in all classifications, often raise the specific issues of fact already noted with respect to ss.65(1). The following case provides one example of clear criteria used to determine what properties were, in this case, "similar" to one another:

The Regional Assessment Commissioner, Region No. 9
v. 184 GLEN Road. (O.M.B., Sept./83)

REV.

The property assessor dealing with an appeal on a residential property assessment was able to support his assessment with references to assessments on properties that had all sold in the same year, were all detached, two-and-a-half storey residences constructed in the same narrow time period as the subject property, were of similar size to it and in close proximity. The Board found the argument persuasive, and fixed the assessment at its original level.

This next case turned more on the question of "vicinity":

REV.

294 MERTON St. v. the Regional Assessment
Commissioner, Region No. 9. (O.M.B., April/84)



The assessor who was arguing for a higher assessment level on a residential property attempted to support his argument with assessments on comparable properties all of which were separated from the subject by a main thoroughfare. The property owner argued that this thoroughfare separated the other properties off into an area that was of a different character from the immediate vicinity surrounding his property. The O.M.B. accepted the owner's argument, and also found that certain repairs on the property should not have been considered as improvements. A lower assessment based on a comparison with a neighbouring property was therefore accepted.

The vicinity within which similar residential properties can be considered for comparison is often quite small. In the Brechkow case, previously discussed with respect to "Nuisance Factors" under s. 18, the specific location of the subject property was very significant:

The Regional Assessment Commissioner, Region No. 27 v. Anthony S. BRECHKOW. (O.M.B., Oct./80)
A homeowner argued that the assessment on his property should have been reduced because of traffic and aircraft noise. The Board allowed a reduction for traffic noise because the assessments on similar homes in the vicinity were receiving a reduction for this factor. The aircraft noise reduction was rejected, however, because an analysis of sales data of similar properties in the vicinity did not indicate a loss in value due to aircraft noise.

The following cases also speak to problems associated with the treatment of residential properties under ss.65(1):

REV.

Mark BLIDNER v. the Regional Assessment Commissioner, Region No. 10. (O.M.B., July/86)

Evelyn J. CUNNINGHAM v. the Regional Assessment Commissioner, Region No. 18. (C.J., Oct./81)

REV.

Cheryl and Scott HARRISON v. the Regional Assessment Commissioner, Region No. 11. (O.M.B., March/85)



APPEALS - BASIC GUIDELINES

SUBJECT

Basis of Comparison - Similar
Properties/Vicinity

REV.

Roman LICHTBLAU v. the Regional Assessment
Commissioner, Region No. 10. (O.M.B., Oct./84)

Kenneth and Catherine MACKINNON v. the Regional
Assessment Commissioner, Region No. 30 and the
Corporation of the Town of Walden. (O.M.B.,
Nov./80)

REV.

The Regional Assessment Commissioner, Region No. 9
v. William PEERS. (O.M.B., Dec./83)

REV.

Barry and Judith SMITH v. the Regional Assessment
Commissioner, Region No. 9. (O.M.B., Nov./84)

MULTI-
RESIDENTIAL
PROPERTIES

The comparison of the assessments on multiple residential properties such as apartment buildings can be aided by a number of techniques, such as an analysis of assessment to square foot ratios, or comparisons of assessment to market value ratios (note the "Multi-Residential Properties" section in the commentary on s. 18).

The following case deals with similar real property when dealing with rental apartment buildings:

COLLINGWOOD Place Limited et al. v. the Regional
Assessment Commissioner, Region No. 16 and the
Town of Collingwood. (C.J., July/78)
The Judge held that single family residences were not similar real property to apartment buildings. In addition, the Judge did not accept the use of sales of commercial properties and mixed use properties to establish a ratio of assessment to market value to be applied to the subject apartment buildings. The assessments were confirmed.

This next case deals with two issues: similar real property within the multi-residential class, and ranges of acceptable assessment figures:

METROPOLITAN Trust Company et al. v. the Regional
Assessment Commissioner, Region No. 11 and the
Corporation of the Borough of East York. 13
O.M.B.R. 242. (O.M.B., Oct./80)



APPEALS - BASIC GUIDELINES

SUBJECT

Basis of Comparison - Similar
Properties/Vicinity

The appellants argued that walk-up, medium-rise and high-rise apartment buildings were all similar properties if they contained a certain number of suites. The Board held that walk-ups were not similar real property to medium and high-rise apartment buildings. The O.M.B. also held that equity was shown if assessments fell within an acceptable range of the mathematical average of the ratios of assessments to gross rents. It was not necessary for the assessment to conform exactly with the mathematical average; the assessment need not be altered if it fell within the acceptable range.

The following cases also address the issue of an assessment range:

REV.

ARTISAN Charitable Foundation v. the Regional Assessment Commissioner, Region No. 10. (O.M.B., Sept./83)

REV.

The Regional Assessment Commissioner, Region No. 11 v. 335947 ONTARIO Limited. (O.M.B., Feb./83)

This next case deals with the question of whether comparisons between rental properties should be done with reference to "actual" rent or "economic" rent (the latter being a sort of average or standard rent figure derived from rental market analysis to be applied to properties of a certain type and in a certain area). The commentary concerning "economic" rent in s. 18 should also be noted.

REV.

Regional Assessment Commissioner, Region No. 3 v. 457293 ONTARIO Limited. (O.M.B., April/86)
The assessments on certain high-rise residential units had been lowered by the A.R.B. to accord with a value calculation based on the actual rent being paid for the apartments. The O.M.B. rejected this method in favour of an economic rent calculation and, after considering evidence with respect to just what the economic rent for apartments in the subject building should be, ordered an assessment to be calculated accordingly.



APPEALS - BASIC GUIDELINES

SUBJECT

Basis of Comparison - Similar
Properties/Vicinity

One problem which the courts have had to deal with in the past was the issue of whether or not condominium buildings could be assessed on the same basis as rental apartment buildings. Court decisions provided the clear answer: No. Rental apartment buildings and condominiums are not "similar" for the purposes of the application of s. 65 of the Assessment Act. The following case demonstrates the sort of reasoning involved:

Re YORK Condominium No. 26, 551 The West Mall and Assessment Commissioner for the Borough of Etobicoke. [1972] 1 O.R. 492. (C.J., Oct./71) Confirmed by O.M.B., Feb./73; 2 O.M.B.R. 91. Objections were raised when condominium units were assessed at a level comparable with physically similar rental apartments in the vicinity. The court held that because the condominium units were owned by their occupants, they were more "similar" to freehold single-family homes than to rental apartments. The assessments on the condominiums therefore had to be reduced to the level of single-family homes of similar value in the vicinity.

This next case shows the other side of the argument:

TERRACE Creek Developments Ltd. v. the Regional Assessment Commissioner, Region No. 18. (C.J., March/78)

The owner of a high-rise apartment building objected to the building's assessment on the grounds that the assessment was higher than that on a physically identical condominium building on the neighbouring property. The court held that the condominium building was not "similar" to the subject property under s. 65. The rental and sales analysis used to produce the subject assessment were held to be correct in that they related to similar rental buildings. The assessment was therefore confirmed.

Condominiums will be discussed further in the commentary on ss.65(2) and (3). The following cases also address issues related to the application of s. 65 to multi-residential properties:

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APPEALS - BASIC GUIDELINES

SUBJECT

Basis of Comparison - Similar
Properties/Vicinity

AL Doren Developments Ltd. v. Assessment
Commissioner, Region 15 and City of Mississauga.
6 O.M.B.R. 231. (O.M.B., Nov.76) - Limited
dividend high-rise

REV.

Regional Assessment Commissioner, Region No. 31 v.
ALGOMA Residential Co-operative Inc. (O.M.B.,
June/86) - Walk-up apartments

AWARD Construction (Hamilton) Limited and
Escarpment Realty Co. Limited v. Regional
Assessment Commissioner, Region No. 20. (C.J.,
Dec./76) - High-rise

REV.

HEATHDALE Court Apts. Ltd. v. the Regional
Assessment Commissioner (12). (O.M.B., June/83)
- Walk-up apartment

REV.

489953 ONTARIO Ltd. v. Regional Assessment
Commissioner, Region 32. 17 O.M.B.R. 447.
(O.M.B., July/85) - Walk-up apartment

REV.

Regional Assessment Commissioner, Region No. 10 v.
SILVER Jubilee Holdings Limited. (O.M.B.,
Sept./83) - Walk-up apartment

REV.

Regional Assessment Commissioner, Region No. 11 v.
SNIDER Holdings Limited. (O.M.B., April/84)
- High-rise

REV.

Donald K. STEEVES as trustee v. the Regional
Assessment Commissioner, Region No. 26. (O.M.B.,
Nov./84) - High-rise and walk-up apartments

COMMERCIAL
PROPERTIES

Commercial properties can be found a wide variety of types and characteristics. The issue of what constitutes a "similar" property "in the vicinity" of a given commercial subject property can therefore raise very difficult problems. The courts' response to this issue is usually based on the interpretation of the facts of the individual case in the context of the legislative provisions. A good example of the court's approach to this problem is found in the DOWNTOWN Oshawa Property Owners case summarized above in the portion of this commentary dealing with "SIMILAR REAL PROPERTY".



APPEALS - BASIC GUIDELINES

SUBJECT

Basis of Comparison - Similar
Properties/Vicinity

This next case deals with the question of how "inequity" is to be weighed with respect to commercial properties:

CAPITAL City Shopping Centre Limited and Dylex Limited (Billings Bridge) v. the Regional Assessment Commissioner, Region No. 3 et al.

(O.M.B., Nov./82 and June/83)

Confirmed by Div. Ct., Aug./83.

In an appeal on a shopping centre assessment, the O.M.B. examined rents paid both at the subject shopping centre and at a similar property, and concluded that the subject assessment was equitable. The taxpayer appealed to the Divisional Court on the grounds that another method of comparison should have been used. The Divisional Court held, however, that the two general issues of ss.65(1), namely similarity and inequity, had been addressed by the O.M.B. in the rental comparison. The comparison technique was a reasonable method to use in the circumstances, and since no inequity had been demonstrated, the assessment as calculated should stand.

The following appeal deals with a mixed-use property:

John W. HAZLETT v. the Regional Assessment Commissioner, Region No. 5. (O.M.B., Feb./85)

In considering an appeal on the assessment of a partly commercial, partly multi-residential property, the O.M.B. rejected as comparables certain properties that differed from the subject in type or property use. The Board analyzed estimated market value, square footage, and assessment ratios using the only two comparable mixed-use properties in the vicinity, and determined that the subject assessment was indeed inequitable. A reduction was therefore ordered.

The following cases also speak to issues related to the application of ss.65(1) to commercial properties:

CANADIAN Odeon Theatres Ltd. v. the Regional Assessment Commissioner, Region No. 1. (O.M.B., Oct./83) - Twin-screen theatre



APPEALS - BASIC GUIDELINES

SUBJECT

Basis of Comparison - Similar
Properties/Vicinity

REV.

COMPAGNIE Fernand Goupil Ltée. v. the Regional
Assessment Commissioner, Region No. 1. (O.M.B.,
Aug./86) - Motel in small town

COMPLETE Rent-Alls (Orillia) Inc. v. the Regional
Assessment Commissioner, Region No. 16 and the
Corporation of the City of Orillia. (C.J.,
Nov./79) - Retail store - converted use

DRAU Realty Ltd. v. R.E. Timbs, Regional
Assessment Commissioner, Region No. 23. (C.J.,
June/73) - Town hall converted to
restaurant/tavern

FOXHEAD Inn Limited v. Regional Assessment
Commissioner, Region No. 18 and the Corporation of
the City of Niagara Falls. 6 O.M.B.R. 348.
(O.M.B., Jan./77) - Hotel/motor inn/parking
garage

REV.

GULF Canada Limited v. Regional Assessment
Commissioner, Region No. 19. (O.M.B., July/84)
- Free-standing gas bar on shopping centre land

REV.

HOTEL Toronto v. Regional Assessment Commissioner,
Region No. 9 et al. 11 O.M.B.R. 170. (O.M.B.,
May/80) - Hotel

REV.

Roger John LOCKHART v. Regional Assessment
Commissioner, Region No. 16. (O.M.B., July/86)
- Automobile dealership

REV.

REGIONAL Shopping Centres Ltd. v. the Regional
Assessment Commissioner, Region No. 20. (O.M.B.,
Jan. and March/85) - Discount department store
in shopping centre

REV.

Allen S. TRAHER v. the Regional Assessment
Commissioner, Region No. 23. (O.M.B., Dec./86)
- Residence partly used commercially



APPEALS - BASIC GUIDELINES

SUBJECT

Basis of Comparison - Similar
Properties/Vicinity

INDUSTRIAL
PROPERTIES

Industrial properties vary widely in their physical characteristics and their uses and are often so unique that "similar" comparable properties are very hard to find. (Note again the commentary on s. 18).

The courts' attitude with respect to what constitutes "similar real property in the vicinity" of a given industrial subject property depends on the facts and circumstances of each individual case. The following case gives an example of circumstances in which comparative analysis based on cost valuation was found to be reliable:

CRAWFORD Fittings (Canada) Limited v. Regional Assessment Commissioner, Region No. 18. (O.M.B., Feb./85)

REV.

A factory owner sought an assessment reduction, basing his argument on a comparison with two nearby factories and a sales analysis on these same two properties. The Board found that since both comparable properties had been reduced by an obsolescence factor to account for the fact that they were not being used, and since both sales had taken place under unusual circumstances, the comparisons were unreliable. The assessor's cost valuation approach was accepted, and the assessment was confirmed.

In this next appeal, comparisons with similar properties indicated that sales data was of use:

CANADIAN Appliance Manufacturing Ltd. v. the Regional Assessment Commissioner, Region No.'s 10 and 12. (O.M.B., April/86)

REV.

After comparing assessment and sales values relating to a number of similar industrial properties, the Board concluded that the cost-based assessment on the subject plant was too high. Sales information was used as a basis for setting a lower assessment figure.

In this next case, the O.M.B. held that two steps must be undertaken in a successful assessment appeal. First the market value must be established to meet the conditions of section 18. Secondly, the assessment must be compared to the assessment of similar property in the vicinity to satisfy section 65.



APPEALS - BASIC GUIDELINES

Basis of Comparison - Similar
Properties/Vicinity

CANADIAN Shipbuilding and Engineering Limited v.
the Regional Assessment Commissioner, Region No.
16. (O.M.B., March/84)

The appellant established an estimate of the value of the subject property, a value significantly lower than that of the assessor. The Board ruled that it was not important to establish that an individual assessment was incorrect, rather it must be established that the assessment was incorrect when compared to similar properties in the vicinity. The assessment was confirmed.

The following cases provide further examples of the courts' reasoning with respect to the application of s. 65 to industrial properties:

REV.

BENSON & Hedges (Canada) Ltd. v. the Regional
Assessment Commissioner, Region No. 20. (O.M.B.,
Aug./84) - Tobacco processing plant

CANADIAN General Electric Co. Ltd. v. The Regional
Assessment Commissioner, Region No. 15 and the
Corporation of the Town of Oakville. (O.M.B.,
May/76) - Old industrial

Re KELSEY-Hayes Canada Limited and the Regional
Assessment Commissioner, Region No. 27 and the
Corporation of the City of Windsor. (C.J.,
Jan./79)

Dismissed by O.M.B., Aug./83 - Tire
manufacturing industrial complex

KING Place Developments Inc. v. the Regional
Assessment Commissioner, Region No. 19 and the
Corporation of the City of Hamilton. (O.M.B.,
Dec./81) - Light industrial

461706 ONTARIO Incorporated v. the Regional
Assessment Commissioner, Region No. 30. (O.M.B.,
May/83) - Pre-engineered steel building
(summarized under ss.18(1))

REV.

20 RESEARCH Road, Lease v. the Regional
Assessment Commissioner, Region No. 11. (O.M.B.,
Dec./85) - Steel frame with insulated metal
panels

REV.

SCARLEY Realty Limited et al. v. the Regional
Assessment Commissioner, Region No. 9. (O.M.B.,
Feb./86) - Old industrial converted to offices



APPEALS - BASIC GUIDELINES

Basis of Comparison - Similar
Properties/Vicinity

REV.

Regional Assessment Commissioner, Region 3 v.
TORINO Investments Co. Ltd. 17 O.M.B.R. 113.
(O.M.B., May/84) - Industrial park lands

REV.

Regional Assessments Commissioner, Region No. 19
v. WESCO Construction Limited. (O.M.B., Jan./85)
- Excess land

REV.

YARDPARK Investments Limited et al. v. the
Regional Assessment Commissioner, Region No. 21.
(O.M.B., Jan./85) - Wholesale/retail lumber mill

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SECTION

APPEALS - BASIC GUIDELINES

SUBJECT

Comparison within Property
Classes

PROPERTY
CLASSES
PRESCRIBED
UNDER
SECTION 63

s.65. (1a) *Notwithstanding that a complaint, appeal, proceeding or action concerns an assessment made for taxation in a year prior to the year for which classes of real property were prescribed in a municipality under subsection 63(3), for the purpose of determining the value at which any real property shall be assessed in any complaint, appeal proceeding or action, real property described in a class prescribed under subsection 63(3) for the municipality is not similar to real property described in another class prescribed under subsection 63(3) for that municipality, and the inclusion of real property within a class so prescribed does not indicate that such property is similar to other real property in that class.*

No cases or comments.

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SECTION

APPEALS - BASIC GUIDELINES

SUBJECT

Condominiums

COMPARABLE
TO SINGLE-
FAMILY
HOMES

REV

s.65. (2) *For the purposes of subsection (1), where a residential assessment has been made with respect to a unit, as defined in the Condominium Act, a proposed unit, as defined in that Act, or a unit or suite in the building of a co-operative housing corporation, the value at which such unit, proposed unit or suite shall be assessed shall be based on the same proportion of the market value thereof as that at which owner-occupied single-family residences in the vicinity are assessed.*

INTRODUCTION

Subsection (2) of section 65 provides specific direction to the courts and tribunals when determining the equity of the assessments of condominiums and co-operatives. For the background to the enactment of ss.65(2), note the York Condominium No. 26 case summarized in the "Multi-residential Properties" section of the commentary on ss.65(1). The effect of ss.65(2) is that a given condominium unit is equitably assessed if it is at the same level of assessment to market value as other single-family residences in the vicinity.

Note: Subsection 65(2) was amended in 1986, effective December 1, 1986. The effect of the amendment was to treat condominium properties like all other properties by not adjusting their assessments annually, as had been directed by the courts (see summary of Peel Condominium No. 57 below). However, on appeal, the courts are directed to continue to have reference to the level at which owner-occupied single-family residences in the vicinity are assessed.

"SHALL BE
BASED"

REV.

The provisions of ss.65(2), like those of ss.65(1), are mandatory. Condominium assessments "shall" be based on proportionate comparisons with assessments on single-family residences. The following case emphasizes this point:

YORK Condominium Corporation No. 381 et al. v. the Regional Assessment Commissioner, Region No. 12.
(Div. Ct., Nov./84)

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APPEALS - BASIC GUIDELINES

SUBJECT

Condominiums

When setting the level of assessment on the subject condominiums, the O.M.B. accepted as the "vicinity" for comparison purposes a political ward (larger than the "vicinity" sought for comparison by the condominium owners) and used only other condominium units for comparison, rejecting the use of single-family houses. The Divisional Court held that the definition of "vicinity" was a proper finding of fact, but that the Board should have had regard to assessments on single-family residences. The case was therefore returned to the Board for re-hearing with single-family residences included in the considerations.

This next appeal also deals with the mandatory nature of the provisions of ss.65(2):

The Regional Assessment Commissioner, Region No. 10 v. YORK Condominium Corporation No. 548.

(O.M.B., April/84)

Condominium owners sought an assessment reduction, but the assessor argued in response that their assessments fell within an acceptable range of proportionate assessment levels. The assessor also argued that comparisons with other assessments justified the subject assessments under ss.65(1). The Board held that the average assessment to sale price ratio should be used rather than an assessment range, and that ss.65(1) could not justify condominium assessments that were not calculated according to ss.65(2). An assessment reduction was therefore ordered to bring the subject assessments to the appropriate level.

The concept of a range of assessment ratios is discussed further below.

"PROPORTION
OF MARKET
VALUE"

Subsection 65(2) directs the courts, in determining the value at which any condominium shall be assessed, to have reference to the level of assessment to market value for single-family residences, but no mention is made of what year the assessment to market value ratio should be established. In the following case, the Divisional Court ruled that the issues raised by ss.65(2) are ongoing and must be addressed annually (note the comment in the "INTRODUCTION" to this subsection):

REV.



APPEALS - BASIC GUIDELINES

SUBJECT

Condominiums

REV.

Re PEEL Condominium No. 57 et al. and Regional Assessment Commissioner, Region No. 15 et al. 26 M.P.L.R. 308; 16 O.M.B.R. 395; 47 O.R. (2d) 466. (Div. Ct., Sept./84)

Leave to appeal to C.A. refused-Oct./84. With the enactment of ss.65(2) in 1975, all condominium units in the subject municipality had been assessed at the 1975 ratio of assessment to market value for single-family residences. Condominium owners argued, however, that because the market value of condominiums had declined since 1975 relative to single-family homes, condominium assessments based on the 1975 ratio were inequitably high. The court held that nothing in ss.65(2) limited comparisons to one specific year, and inequities arising out of relative shifts in market value between condominiums and other single-family residences would have to be addressed and corrected.

The question of whether a range of assessment to market value ratios can be used, or whether the average of such ratios ought to be applied, has been noted earlier in the York Condominium Corporation No. 548 case. This next appeal provides another example of a case in which the O.M.B. applied the average ratio:

REV.

YORK Condominium Corporation No. 202 v. Regional Assessment Commissioner, Region 12. 16 O.M.B.R. 378. (O.M.B., Nov./84)

A property assessor argued that the assessment to market value ratio for the subject condominiums fell within an acceptable range of ratios for single-family residences in the vicinity. The Board held, however, that in view of the large number of sales considered in the ratio analysis, the average or median assessment to sales ratio was the correct factor to apply. An assessment reduction using this average assessment to sales ratio was therefore ordered.

In the following case, however, a range of ratios was held to be acceptable:

REV.

Regional Assessment Commissioner, Region 12 v. YORK Condominium Corporation No. 531. 17 O.M.B.R. 117. (O.M.B., Feb./85)

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APPEALS - BASIC GUIDELINES

Condominiums

The Board held that the assessment to market value ratio in the subject condominium appeal could not be an exact figure, but rather that a range of figures should be accepted. A ratio within this range was therefore used to calculate appropriate assessment values for the condominiums.

"SINGLE
FAMILY
RESIDENCES"

One problem that has arisen with respect to ss.65(2) is that of what properties constitute "single-family residences" for the purposes of comparison under that subsection. The Divisional Court addressed this point in the next appeal:

REV.

YORK Condominium Corporation No. 460 et al. v. Regional Assessment Commissioner, Region No. 11. 17 O.M.B.R. 503. (Div. Ct., June/85)

Leave to appeal to C.A. refused-Sept./85

The Divisional Court confirmed the decision of the O.M.B. which had decided that the phrase "single-family residences" in ss.65(2) included both houses and condominium units. The Court held, therefore, that the O.M.B. decision should stand.

An earlier O.M.B. case also speaks to this issue:

PARKS, Calvin v. the Regional Assessment Commissioner, Region No. 3 and the Corporation of the City of Vanier. 7 O.M.B.R. 487. (O.M.B., Nov./77)

The level of assessment for a condominium unit had been established by considering the assessments and market values of single-family detached houses in the vicinity. The Board held that this approach was too narrow, and that other single-family residences, such as semi-detached housing, duplexes, and row housing units, should have been considered as well. On the basis of this broader range of comparison, the assessment on the subject condominium unit was reduced.

"IN THE
VICINITY"

The courts have also dealt with the application of the limits to "vicinity" used in the establishment of the assessment to market value ratio for single-family residences. Consider this example:

REV.

Regional Assessment Commissioner, Region No. 10 v. YORK Condominium Corporation Nos. 54/128. (O.M.B., Sept./84)



In this condominium appeal, the O.M.B. established a vicinity bounded by natural boundaries, stating that its definition of a vicinity contained a sufficient number of comparable properties in close proximity to the subject condominium units to allow meaningful comparison. The Board considered both condominium units and single family houses in this vicinity to establish an average assessment to market value ratio, and fixed the assessments on the subject condominium units on that basis.

Note, however, that the definition of "vicinity" in the context of ss.65(2) is a question of fact, just as it is in ss.65(1). Different circumstances may produce a different result, as was demonstrated in the case of YORK Condominium Corporation No. 381 as noted earlier in this commentary.

Other issues related to the application of subsection 65(2) are discussed in the following cases:

REV.

ALBANY Court Apartments Inc. v. the Regional Assessment Commissioner. (O.M.B., June/83)

- Whether building is an apartment or co-operative housing corporation

REV.

Paul HELLYER v. the Regional Assessment Commissioner, Region No. 9. (O.M.B., April/86)

- Allowance for exposure and view

REV.

Regional Assessment Commissioner, Region No. 18 v.

NIAGARA North Condominium Corporation Number 21.

(O.M.B., Jan./87) - Whether vicinity should be extended so as to include sales of condominiums

REV.

Re WENTWORTH Condominium Corp. No. 46 et al. and Regional Assessment Officer, Region No. 19. 54

O.R. (2d) 642. (H.C.J., May/86) - Definition of vicinity in a municipality reassessed under ss.63(3)

REV.

Regional Assessment Commissioner, Region 10 v. Smith Donkin Associates Ltd. (YORK Condominium No. 77 et al.). 17 O.M.B.R. 8. (O.M.B., March/85)

- Discussion of "single-family residences", vicinity, range of assessment to market value ratios



Ministry
of
Revenue

65(2)

SECTION

SUBJECT

APPEALS - BASIC GUIDELINES

Condominiums

REV.

Regional Assessment Commissioner, Region No. 10 v.
YORK Condominium Corporation Number 82. (O.M.B.,
April/86) - Whether assessments of properties
under appeal should be used when calculating
assessment to market value ratio

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Ontario

Ministry
of
Revenue

65(3)

**A GUIDE TO
THE ASSESSMENT ACT**

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SECTION

CONDOMINIUMS

SUBJECT

Conversion from Rental

CONDOMINIUM
CONVERTED
FROM
RENTAL
BUILDING

s.65. (3) *Notwithstanding subsection (2), where a unit or proposed unit within the meaning of the Condominium Act was, before it became such unit or proposed unit, part of a building the suites or apartments in which were rented to a tenant or tenants for residential accommodation, subsection (2) ceases to apply to such unit or proposed unit until it is sold to an individual or individuals who acquire and occupy it as his or their residence or that of members of his or their families, and until so sold and occupied, such unit or proposed unit shall be assessed at the level of assessment of similar rental property in the vicinity to which subsection (2) is not applicable.*

REV.

Under ss.65(3) units in rental apartment buildings that have been converted to condominiums but continue to be rented out are to be assessed on the same basis as apartments (i.e., not on the same basis as single-family residences) until they actually become owner-occupied. This subsection was enacted to avoid the problem of apartment buildings being converted to condominiums for the sole reason of enjoying the favourable assessment treatment afforded condominiums even though the apartments continued to be rented.

The intention and application of ss.65(3) was examined in the following case:

Re GOSSNER and Regional Assessment Commissioner et al. 42 O.R. (2d) 119. (Div. Ct., June/83)

One of the issues of this appeal was whether ss. 65(3) should be applied to a building where, prior to its conversion to a condominium, not all of the units had been leased. The Court ruled that the more reasonable interpretation of ss.65(3) was that it referred to a building that may have been only partly rented, as well as ones which were completely rented, prior to conversion. The Court concluded that ss.65(2), which assessed the condominium units on the same basis as other owner-occupied single family residences in the vicinity, applied as a result of ss.65(3), to those condominium units which had been sold and were occupied by their purchasers.

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SECTION

CONDOMINIUMS

SUBJECT

Conversion from Rental

65(3)

The following case also deals with the extent and application of ss.65(3):

Re DICENZO Construction Co. Ltd. and Regional Assessment Commissioner, Region No. 19 et al. 33 M.P.L.R. 1; 54 O.R. (2d) 705. (H.C.J., June/86)
The owner of a number of rented condominium townhouses argued that the wording of ss.65(3) did not apply to townhouses, and that the units should therefore be assessed at the lower rate under ss.65(2). The Court held, however, that townhouses still being rented did fall within the scope of ss.65(3), and that the higher assessment classification should apply. The Court also rejected the owner's argument to the effect that the townhouses should have been assessed in separate blocks even though they were all under the same legal description.

REV.

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SECTION

PROCEEDINGS OR ACTIONS

SUBJECT

Exceptions to Limitations

EXCEPTIONS *s.66.* TO LIMITATIONS OF COURT ACTIONS

Notwithstanding section 51, a proceeding or action may be brought in a court pursuant to section 50 or 51 at any time but the court may only alter an assessment to affect taxes fixed, levied and payable with respect to such assessment in the year in which the action or proceeding is commenced and any subsequent year.

REV.

Section 66 provides that, where an appeal has been filed under section 50 to a court of law, the decision of the court will only affect the taxes in the year in which the appeal is filed and subsequent years. This next case deals with whether the assessments in previous years can also be altered when complaints have been filed with the Assessment Review Board:

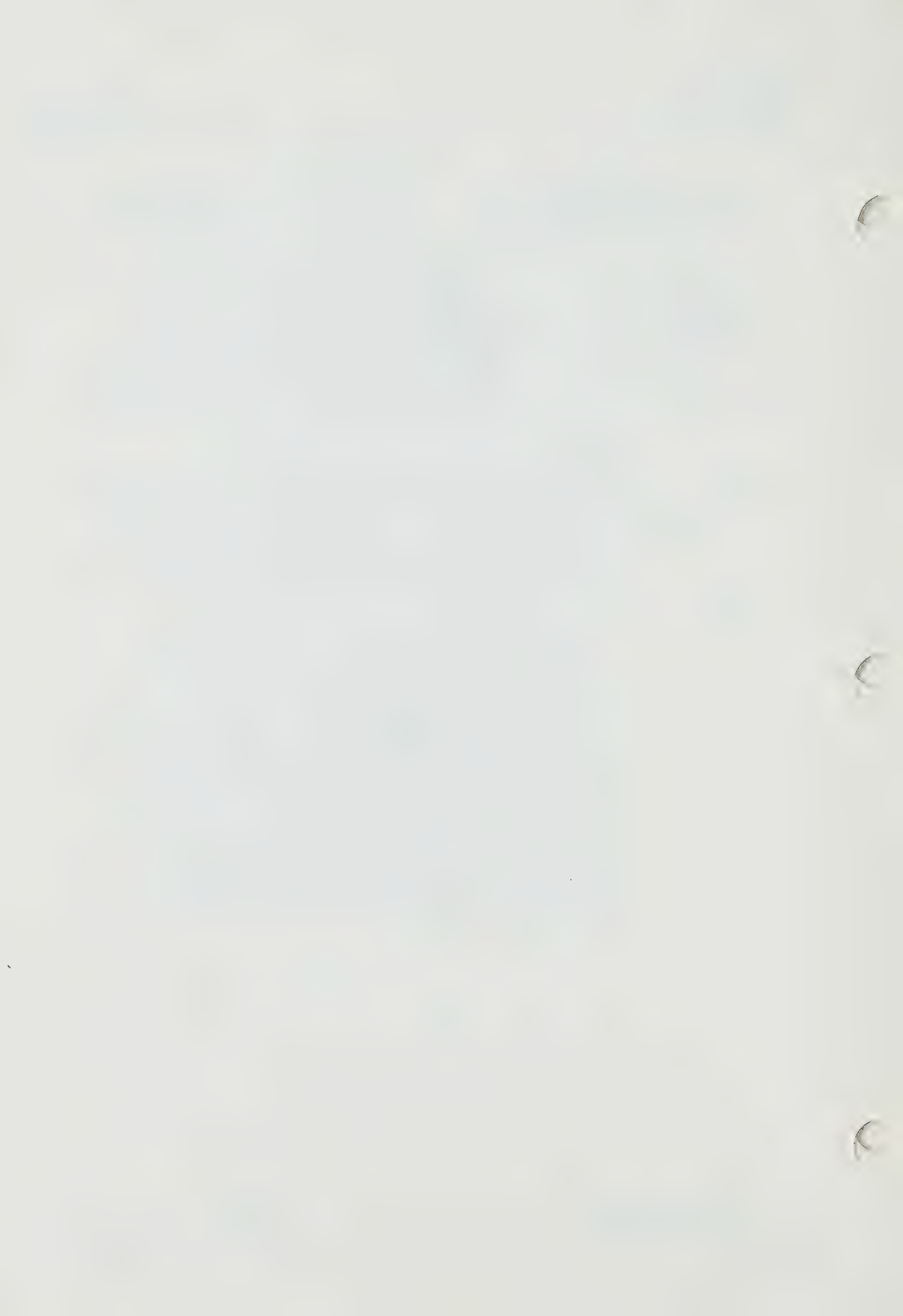
CANADIAN Life Insurance Association Inc. v. Regional Assessment Commissioner, Region No. 9 et al. 22 M.P.L.R. 113. (H.C.J., May/83)
Confirmed by Div. Ct., March/84.

A taxpayer had appealed his assessment to the Assessment Review Board in the years 1977 to 1980 and all these appeals were still outstanding, having been appealed to a higher level. The taxpayer then initiated an appeal under s. 50 in 1980. The court ruled that s. 66 should not be interpreted so narrowly as to mean the court decision could only apply to the 1980 and subsequent tax years. Where all the appeals are presently "alive", the court ruled it had jurisdiction to deal with the assessments for the years 1977 to 1979.

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ASSESSMENTS

SUBJECT

Inoperative in 1971

ASSESSMENTS s.67.

IN 1971

INOPERATIVE

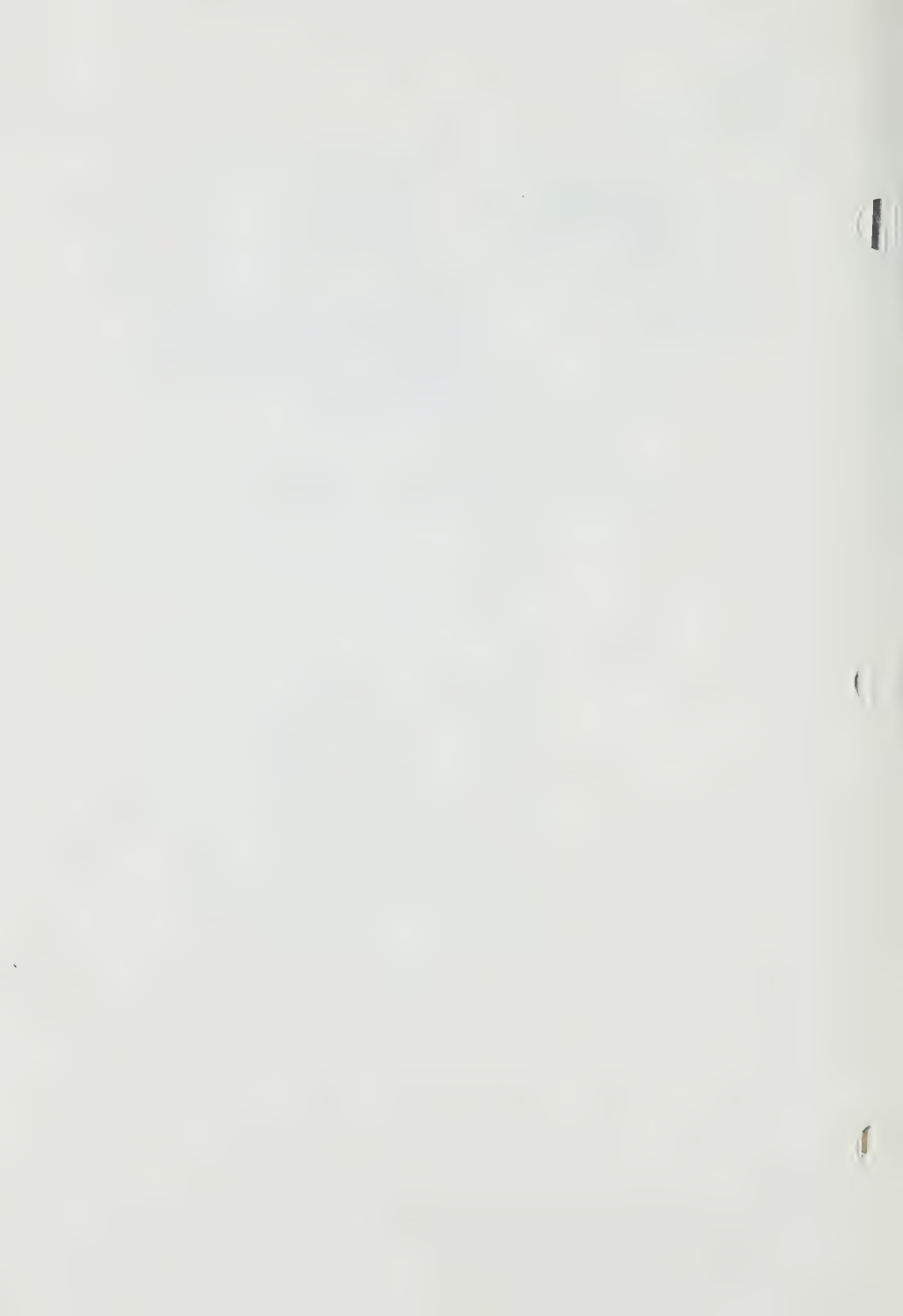
No assessment taken in any municipality under subsection 35(1) or (2) in the year 1971 shall be used for purposes of taxation and no appeal, complaint, action or proceeding shall lie, be brought, maintained or continued with respect to any such assessment.

No cases or comments.

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SECTION

SUBSECTION 24(6)

SUBJECT

Ceases to be in Force

SUBSECTION *s.69.*
24 (6) CEASES
TO BE IN
FORCE

*Subject to section 70, subsection 24(6)
is not in force and remains inoperative
until a day to be named by proclamation
of the Lieutenant Governor.*

REV.

No cases or comments.

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SECTION

PROCLAMATIONS

SUBJECT

Market Value

SUSPENSION
OF SECTIONS
62 TO 67

s.70. (1) *Notwithstanding any other provision of this Act, the Lieutenant Governor by proclamation may provide that, on a day named in the proclamation, the whole or any part of the provisions of sections 62 to 67 shall cease to be in force in any municipality or territory without municipal organization comprised in a locality named or described in the proclamation, and upon the making of such a proclamation the provisions of this Act specified in the proclamation cease to be in force in the municipality or territory without municipal organization comprised in a locality named or described as of the date named in the proclamation.*



SECTION 69
COMES INTO
FORCE

(2) *The Lieutenant Governor by proclamation may name a day upon which the provisions of this Act referred to in section 69 shall cease to be inoperative and shall come into force in any municipality or territory without municipal organization comprised in a locality named or described in the proclamation, and upon the making of the proclamation such provisions shall cease to be inoperative and shall come into force in the named or described municipality or territory without municipal organization comprised in a locality upon the day named in the proclamation.*

ASSESSMENT
ROLL AT
MARKET VALUE

(3) *In any proclamation made under this section, the Lieutenant Governor may also name a day, not less than one month after the date in the proclamation specified as the date when it takes effect in any municipality or territory without municipal organization comprised in a locality, upon which the assessment commissioner for the assessment region within which any municipality or territory without municipal organization*

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PROCLAMATIONS

Market Value

comprised in a locality named or described in the proclamation is situated shall return a new assessment roll for the assessment at market value of real property in any municipality or territory without municipal organization comprised in a locality named or described in the proclamation, and the assessment commissioner shall return a new assessment roll for such municipality or territory without municipal organization comprised in a locality in accordance with the provisions of this Act that will be in force in that municipality or territory without municipal organization comprised in a locality on the day that the new assessment roll is returned.

MUNICIPAL TAXES
LEVIED ON NEW
ASSESSMENTS

- (4) Notwithstanding any special or general Act to the contrary, where a proclamation is made under this section in which a day is named for the return of a new assessment roll in a municipality described in the proclamation, any municipal or school tax to be levied and raised in the year in which such named day occurs by the council of such municipality under the authority of the Municipal Act, and any taxes and rates that, by any other enactment, the council of such municipality may be required to levy and collect in the year in which such named day occurs, and any mill rate to be determined in such municipality for the year in which such named day occurs for the purpose of taxation in that year shall be based on the value of property contained in the new assessment roll returned in such municipality in accordance with subsection (3).

APPORTIONMENT
OF COUNTY TAX
RATE

- (5) Notwithstanding section 365 of the Municipal Act, where a proclamation is made under this section in which a day is named for the return of a new assessment roll in a township, town or village described in the proclamation, the council of the county in which such township, town or village is



PROCLAMATIONS

Market Value

situated may by by-law passed before the 1st day of December in the year in which such named day occurs determine to apportion the county rate for such year by taking into consideration and making adjustment for any change in assessment that has resulted from the return of a new assessment roll in accordance with subsection(3) in any township, town or village situated in the county, and except in so far as they are inconsistent with this section, the provisions of section 365 of the Municipal Act apply to the apportionment of the county rate for such year, and within ten days of the passing of a by-law under this subsection, the county clerk shall send a copy of such by-law by registered mail to the clerk of each municipality situated within the boundaries of the county.

SCHOOL TAXES
LEVIED ON
NEW ASSESSMENTS

- (6) Notwithstanding any special or general Act to the contrary, where a proclamation is made under this section in which a day is named for the return of a new assessment roll in a territory without municipal organization comprised in a locality described in the proclamation, any taxes for school purposes that a public school board, divisional board of education or separate school board levies in the year in which such named day occurs in the territory without municipal organization comprised in a locality, and any mill rate to be determined in such territory without municipal organization comprised in a locality for taxation for school purposes in that year, shall be based on the value of property contained in the new assessment roll returned in such territory without municipal organization comprised in a locality in accordance with subsection (3).



PROCLAMATIONS

SUBJECT

Market Value

RETURN OF
SECOND
ASSESSMENT ROLL

(7) *For the purposes of providing, in any municipality or territory without municipal organization comprised in a locality, an assessment roll for taxation in the year following that in which a new assessment roll is returned in such municipality or territory without municipal organization comprised in a locality on a day named in a proclamation made under this section, nothing contained in this section shall be construed to prevent the return, in the year in which such new assessment roll has been returned, in such municipality or territory without municipal organization comprised in a locality of a second assessment roll in accordance with the provisions of this Act that will be in force in such municipality or territory without municipal organization comprised in a locality after the proclamation comes into force.*

NEW ASSESSMENT
MAY BE FOR ONLY
PART OF A
MUNICIPALITY

(8) *A proclamation under this section may be made for part only of a municipality or of territory without municipal organization comprised in a locality, and where a day is named in such proclamation for the return of a new assessment roll in accordance with subsection (3), the new assessment roll shall be returned for only the real property situated in that part of the municipality or territory without municipal organization comprised in a locality that is described in the proclamation.*

No cases or comments.







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RELATED LEGISLATION

SUBJECT

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REV.

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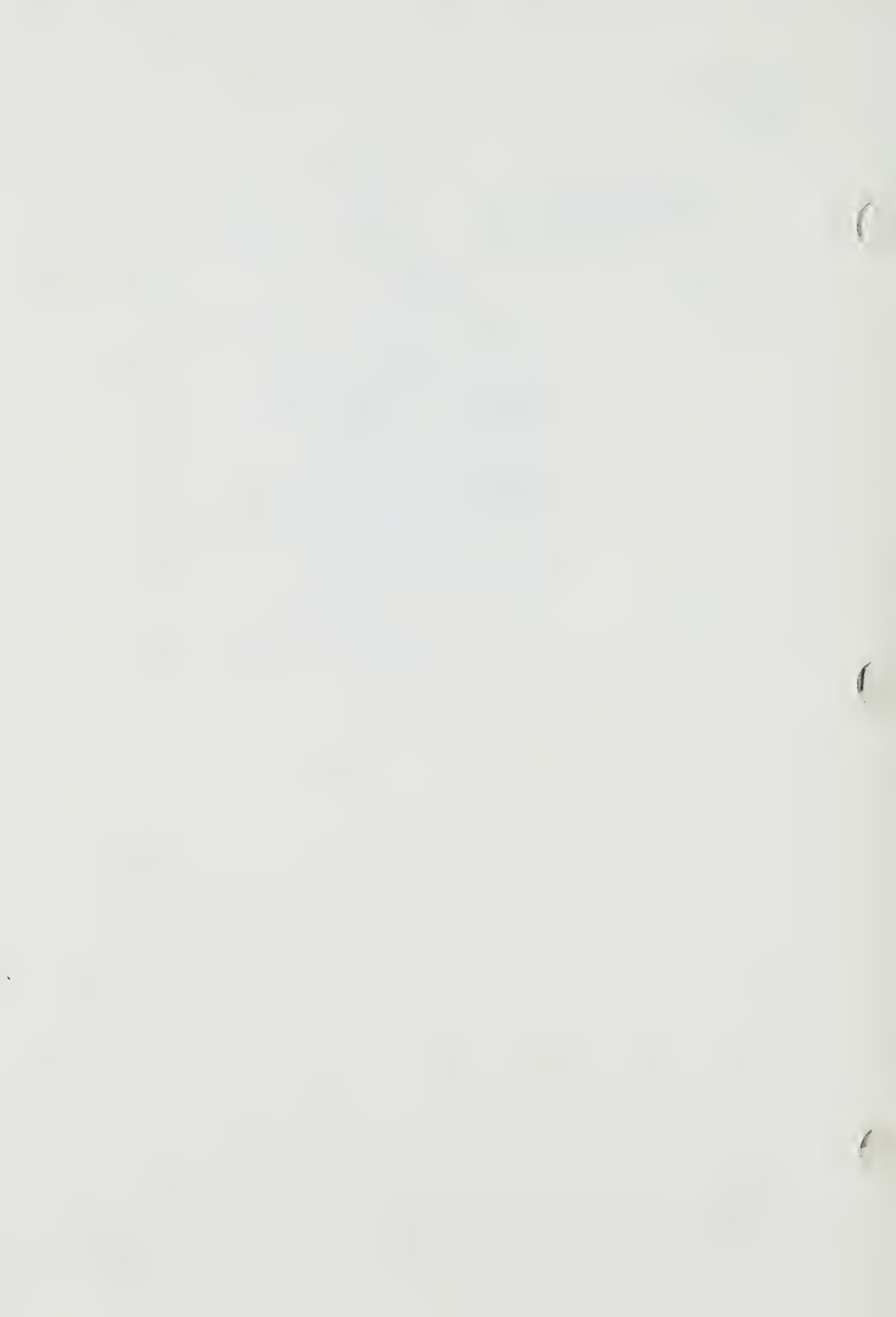
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SECTION

APPENDIX 1

SUBJECT

Related Legislation
- Introduction

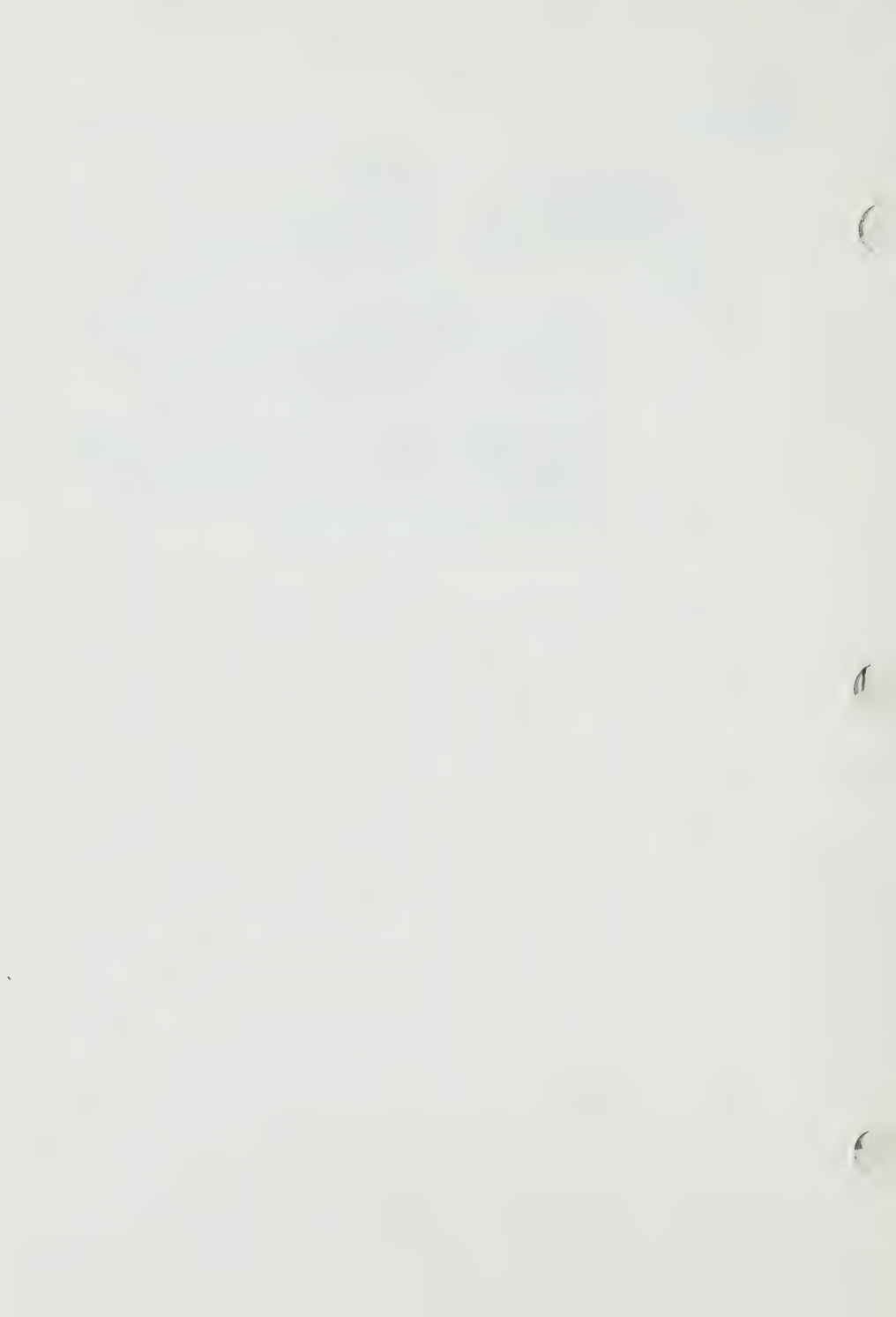
INTRODUCTION Many pieces of legislation touch on property assessment in some way. This portion of the Guide will quote from some pieces of legislation those sections that are immediately related to the purposes of the Assessment Act, and provide commentary where appropriate.

This appendix does not cover all legislation that is related to property assessment. The Acts that are mentioned are the more frequently referred to legislation and are of a general nature. Private Acts which make reference to one particular property have not been included.

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APPENDIX 1

SUBJECT

Agricultural Societies Act
R.S.O. 1980, c.14

Agricultural Societies Act

EXEMPTION
FROM
TAXATION

s.28.

The property of an agricultural society is exempt from taxation, other than taxes for local improvements, when in actual occupation by the society or by its tenants if the rent is applied solely for the purposes of the society.

No cases or comments.



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APPENDIX 1

SUBJECT

Assessment Review Board Act,
R.S.O. 1980, c.32

Assessment Review Board Act

INTERPRE- TATIONS

s.1

In this Act,

(a) "Board" means the Assessment Review Board;

(b) "municipality" means a city, town, village or township.

s.2.

The Assessment Review Board is hereby continued.

COMPOSITION

s.3.

The Board shall be composed of a chairman and such number of vice-chairmen and other members as the Lieutenant Governor in Council considers advisable, all of whom shall be appointed by the Lieutenant Governor in Council.

s.4.

(1) The Public Service Act, except sections 4 and 6, applies to the members of the Board who are employed on a full-time basis.

(2) The Public Service Superannuation Act applies to the members of the Board who are employed on a full-time basis.

BOARD MEMBERS

s.5.

One member of the Board constitutes a quorum and is sufficient for the exercise of all of the jurisdiction and powers of the Board.

s.6.

The chairman or a vice-chairman shall from time to time assign the members of the Board to its various sittings and may change any such assignments at any time and the chairman or a vice-chairman may from time to time direct any officer or other member of the staff of the Board to attend any of the sittings of the Board and may prescribe his duties.

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APPENDIX I

Assessment Review Board Act
R.S.O. 1980, c.32

MEMBERS'
OATH

s.7. *Every member of the Board before entering upon his duties shall take and subscribe the following oath (or affirmation in cases where, by law, affirmation is allowed):*

"I,.....do solemnly swear (or affirm) that I will, to the best of my judgment and ability, and without fear, favour or partiality, honestly decide the appeals to the Assessment Review Board that may be brought before me for trial as a member of the Board."

BOARD
HEARINGS

s.8. *Subject to the approval of the Lieutenant Governor in Council, the Board shall make rules governing its practice and procedure and the exercise of its powers.*

s.9. *The Board shall hold sittings at such place or places within a county or district or a metropolitan or regional or district municipality as the chairman from time to time may designate for the purpose of hearing and deciding all complaints relating to assessments in municipalities within the county or district or the metropolitan or regional or district municipality in respect of which a person may appeal to the Board under the Assessment Act or any other Act.*

GENERAL

s.10. (1) *A Registrar of the Board and such regional registrars and other officers and employees as are considered necessary shall be appointed under the Public Service Act.*

(2) *In the absence for any reason of any regional registrar, the Attorney General may appoint an acting regional registrar who, while so acting, has all the powers and duties of a regional registrar.*



APPENDIX 1

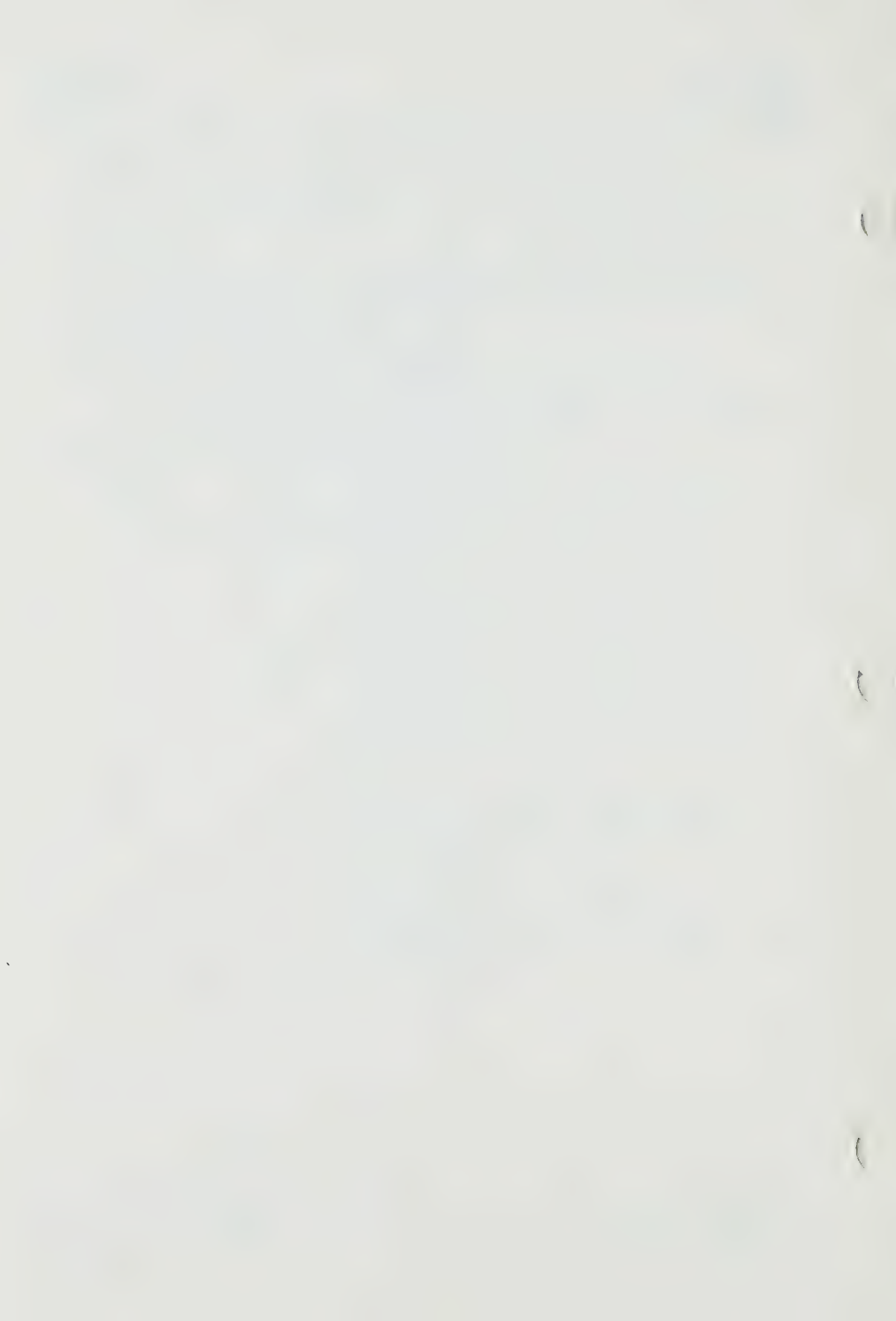
Assessment Review Board Act,
R.S.O. 1980, c.32

CLERK OF
BOARD

s.11. *There shall be a clerk of the Board for each hearing of the Board and the clerk shall keep a record of the proceedings and decisions of the Board, which shall be certified by a member of the Board who heard the appeal and when so certified shall be forwarded forthwith to the regional registrar.*

s. 12 *Where sittings of the Board are to be held in a municipality, the municipality shall provide a suitable room and other necessary accommodation for holding the Board.*

No cases or comments.





A GUIDE TO THE ASSESSMENT ACT

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SECTION

APPENDIX 1

SUBJECT

Conservation Authorities Act,
R.S.O. 1980, c.85

Conservation Authorities Act

LAND,
EXCEPT WORKS,
IS TAXABLE

s.33. (1) Land vested in an authority, except works erected by an authority for the purposes of a project, is taxable for municipal purposes by levy under subsection 158 (3) of the Municipal Act upon the assessment of such land determined in each year by the Ministry of Revenue based on the assessed value of the land at the market value thereof in accordance with section 18 of the Assessment Act as if the works erected by the authority on such land had not been erected.

(2) Notwithstanding subsection (1), section 17 of the Assessment Act applies with necessary modifications in respect of lands vested in an authority.

(3) The Ministry of Revenue shall, on completion of the valuation of such land, deliver or mail to each authority concerned and to the clerk of each municipality in which any of such land is situate a notice setting out the valuation of such land in the municipality.

APPEAL TO
O.M.B.

(4) Any such municipality or the authority may appeal to the Ontario Municipal Board against the valuation of the land in the municipality.

(5) A notice of appeal to the Ontario Municipal Board under subsection (4) shall be sent by the party appealing, by registered mail, to the secretary of the Board within twenty-one days after the notice of valuation has been delivered or mailed under subsection (3).

(6) Upon receipt of a notice of appeal, the secretary of the Ontario Municipal Board shall arrange a time and place for hearing the appeal and shall send notice thereof to all parties concerned in the appeal at least fourteen days before the hearing.

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SUBJECT

Conservation Authorities Act,
R.S.O. 1980, c.85

APPENDIX 1

- (7) *The Ontario Municipal Board upon appeal shall determine the amount at which the land in question shall be valued, and the decision of the Board is final and binding.*
- (8) *The assessment of land under subsection (1) shall be determined by the Ministry of Revenue in each year for the purpose of taxation in the following year.*

No cases or comments.



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SECTION

APPENDIX 1

SUBJECT

Municipal Act,
R.S.O. 1980, c.302

Municipal Act

CANCELLATION, s.496. (1) *An application to the council for the
REDUCTION, reduction or refund of
OR REFUND taxes levied in the year in respect of
OF TAXES which the application is made may be
made by any person,*

- (a) *in respect of real property liable to taxation at the rate levied on commercial assessment as defined in the Ontario Unconditional Grants Act that has ceased to be real property that would be liable to be taxed at such rate; or*
- (b) *in respect of real property that has become exempt from taxation during the year or during the preceding year after the return of the assessment roll; or*
- (c) *in respect of a building that during the year or during the preceding year after the return of the assessment roll,*
 - (i) *was razed by fire, demolition or otherwise, or*
 - (ii) *was damaged by fire, demolition or otherwise so as to render it substantially unusable for the purposes for which it was used immediately prior to the damage; or*
- (d) *in respect of a mobile unit that was removed from the municipality during the year or during the preceding year after the return of the assessment roll; or*
- (e) *who is unable to pay taxes because of sickness or extreme poverty; or*

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APPENDIX 1

Municipal Act,
R.S.O. 1980, c.302

- (f) *who is overcharged by reason of any gross or manifest error that is a clerical error, the transposition of figures, a typographical error or similar type of error, but not an error in judgment in making the assessment upon which the taxes have been levied; or*
- (g) *liable for business tax who has not carried on business for the whole year, except where the business was intended to be or was capable of being carried on during a part of the year only, or was not carried on for a period of less than three months during the year by reason of repairs to or renovations of the premises in which the business was carried on.*

INCREASE
IN TAXES
WHERE
UNDERCHARGE
HAS RESULTED
FROM CLERICAL
ERROR

- s.497. (1) *The treasurer may by filing a notice of the recommendation with the clerk of the municipality recommend to the council that the taxes levied against any person be increased in the year in which the recommendation is made, where he ascertains that such person has been undercharged by reason of any gross or manifest error that is a clerical error, the transposition of figures, a typographical error or similar type of error, but not an error in judgment in making the assessment upon which the taxes have been levied.*

Section 496 of the Municipal Act provides the means whereby municipal taxes can be cancelled, reduced or refunded under a system quite separate from the usual assessment appeal procedure. Section 497 provides a corresponding mechanism for tax increases. These reductions or increases of taxes are available under certain very specific circumstances, such as the demolition of a building (ss.496(1)(c)).



Generally, the courts and tribunals have been very strict in their interpretation of the applications of s. 496. The facts of a given situation must come squarely within the wording of the section if a tax reduction is to be granted. The following case provides one example of a situation that simply did not fit within the wording:

REV

William WALKER et al. v. the Regional Assessment Commissioner, Region Number 23. (O.M.B., July/84)
An assessment appeal resulted in a settlement at a lower assessment figure, but this settlement was finalized after the following year's assessment had already been made. Having missed the usual assessment appeal period, the property owners sought a tax reduction under s. 496. The O.M.B. refused this application, saying that s. 496 was not applicable and that the taxpayers should have filed an appeal in the usual way.

The demolition or the damaging of a building is one situation in which a tax refund may be available under section 496(1)(c). Here again, the interpretation given to this provision has been narrow, as this next case demonstrates:

REV

The Corporation of the City of Toronto v. PLYMBRIDGE Investments Ltd. et al. (O.M.B., March/85)
When extensive renovations were commenced on three residential apartment buildings, the building owners argued that the damage done to the structures in the commencement of these renovations qualified them for a tax refund under 496(1)(c)(ii). The Board held, however, that the wording of s. 496, intended to provide relief for the taxpayer whose building was "damaged", could not be so construed as to provide a refund when the process taking place was actually voluntary renovation. No refund was granted.

The effects of urea formaldehyde foam insulation (U.F.F.I.) have also led to applications for relief under section 496(1)(c)(ii), in that the damaging effects of U.F.F.I. have been thought by some to render a property "substantially unusable". The following case is instructive:



REV.

Re SAKALA et al. and City of Hamilton. 17
O.M.B.R. 110. (O.M.B., Nov./84)

Tax refunds under s.496 were sought by property owners whose homes had been insulated by U.F.F.I. Upon finding that none of the property owners had vacated the houses to allow for the U.F.F.I. to be removed, and that few had suffered from any medical problems, the Board held that the homes had not been so "damaged" as to have been "substantially unusable". No refunds were granted.

Other problems that arise with respect to the interpretation of sections 496 and 497 include the question of exactly what constitutes a "gross or manifest error" (as in ss.496(1)(f)).

One of the clearest interpretations of this concept was given by MacDonald, C.J.A., commenting on similar British Columbia legislation in B.C. Hop Co. v. The King [1926] 3 D.L.R. 182. (B.C.C.A.) at p.184:

"...it would be, in my opinion, wrong to say that the words 'manifest error in the assessment roll' could refer to an error which could only be ascertained in the case fact... 'Manifest' means, 'clearly revealed to the eye, mind or judgment; open to view or comprehension, obvious'"

In the following case, a taxpayer applied for a refund of taxes under section 496(1)(e) and/or (f):

The Corporation of the City of Woodstock v. ANDRON Estates Limited. (O.M.B., June/83)

At the time of a Section 63 reassessment, a 26-acre parcel of land had been assessed as industrial rather than the previous farm classification. The taxpayer applied for a refund of taxes under the Municipal Act. The O.M.B. held that failure by the corporation to review its assessment notices was not a "gross or manifest error" under the provisions of ss.496(1)(f). Although the bank which held a mortgage on the property had called that mortgage, this fact was not sufficient evidence to indicate "extreme poverty" under ss.496(1)(e). Therefore, the corporation was not allowed a refund of its taxes.




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Municipal Act,
R.S.O. 1980, c.302

This next case is also instructive:

HOMACK Restaurants Limited v. the City of Woodstock. (O.M.B., May/85)

REV.  A taxpayer applied for a refund under ss.496(1)(f) on the grounds that a court decision relating to another appeal had clarified the interpretation of law in such a way as to show that the taxpayer's own business assessment was incorrect. The Board held that in view of the fact that the business assessment had been correctly made according to the policy and case law at that time, no "gross or manifest error" had been made. Section 496(1)(f) was not applicable and no refund could be granted.

In the area of business tax, the courts have also been very cautious in allowing reductions, as this next case demonstrates:

The FIRESTONE Tire and Rubber Co. of Canada Ltd. v. the Corporation of the City of Hamilton. [1955] S.C.R. 604; [1955] 3 D.L.R. 417. (S.C.C., May/55)

A manufacturing company applied for a refund of business tax on the grounds that its plant had been closed down for four months due to a strike. The Supreme Court of Canada rejected the idea that the presence or absence of actual manufacturing activities determined whether or not the company had "carried on business" during that time. In fact, the company was conducting business. Non-unionized employees still carried out their functions. As Mr. Justice Laidlaw of the Court of Appeal observed, "indeed it would appear to me that they carried on business in every way possible in the face of the strikes and ceased only for the time being to manufacture and distribute their products". No refund of business tax was granted.

The following case turned on similar reasoning:

The Regional Assessment Commissioner, Region No. 11 and the Corporation of the Borough of Scarborough v. SUN Oil Company Limited. 8 O.M.B.R. 489. (O.M.B., March/78)

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An interruption in the supply of gasoline caused four service stations to close down temporarily. The Board held that this limited cessation of activity did not qualify the subject company for business tax reduction under ss.496(1)(g) of the Municipal Act.

This next case provides another example of the strict procedural limits of s. 496:

Re SYSTEMS Dimensions Limited and the Corporation of the City of Toronto. (C.J., March/76)
The subject company had received a business assessment notice for certain premises, a portion of which it neither occupied nor used. The company paid the resultant business tax, but subsequently sought a refund under s. 496 of the Municipal Act. The court held that this situation did not fall within the scope of subsection 496(1)(g), and that the application for a business tax refund under that section had to be refused.

The following cases also speak to issues related to the scope and limits of s. 496:

Re BELL Canada and the Corporation of the City of Toronto. (C.J., Sept./72)
Confirmed by O.M.B., 1973.

Re CANADIAN General Electric Company Limited and the Corporation of the City of Toronto. (C.J., March/72)

FALCONBRIDGE Limited v. the Corporation of the Town of Nickel Centre et al. (O.M.B., Jan./85)

Appeals relating to sections 496 and 497 of the Municipal Act follow a system similar in many respects to the appeal system under the Assessment Act, except that appeals under these sections of the Municipal Act may be heard first by the municipal council. The decision of the council may then be appealed to the Assessment Review Board and then to the Ontario Municipal Board. However, municipal councils may enact by-laws under subsections 496(2) and 497(2) which provide that the Assessment Review Board be the tribunal of first complaint.

REV.



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APPENDIX 1

SUBJECT

Municipal Affairs Act,
R.S.O. 1980, c.303

Municipal Affairs Act

DEFINITION OF "LOCAL BOARD"

s.1. (c) *"local board" means a school board, public utility commission, transportation commission, public library board, board of park management, local board of health, board of commissioners of police, planning board, or any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes, including school purposes, of a municipality or of two or more municipalities or parts thereof;*

DEFINITION OF "PUBLIC UTILITY"

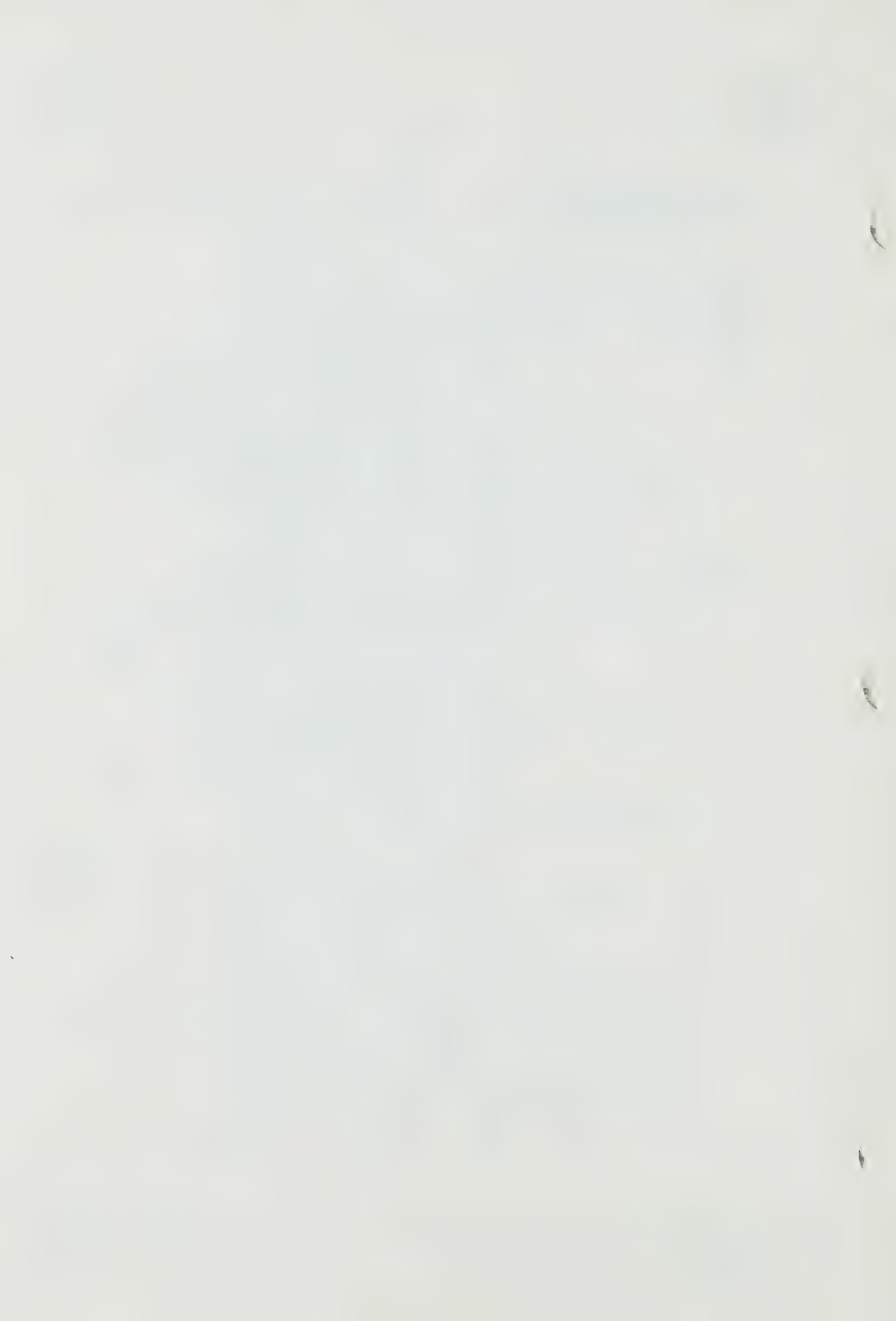
(g) *"public utility" means a waterworks, gasworks, including works for the transmission, distribution, and supply of natural gas, electrical power or energy works, or system for the generation, transmission or distribution of electric light, heat or power, a telephone system, a street or other railway system, a bus or other public transportation system or any other works or system for supplying the inhabitants generally with necessities or conveniences that are vested in or owned, controlled or operated by a municipality or municipalities or by a local board;*

No cases or comments.

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APPENDIX 1

SUBJECT

Municipal Tax Assistance Act,
R.S.O. 1980, c.311

Municipal Tax Assistance Act

GRANT-IN-LIEU s.4.
PAYMENTS ON
PROVINCIAL
PROPERTY

- (1) *The Minister, [of Municipal Affairs] in respect of provincial property owned by the Crown in right of Ontario and not occupied by a Crown agency, may pay in each year to the municipality in which the property is situate the amount which the rate levied for general municipal purposes on the assessment for real property that is used as a basis for computing business assessment in that municipality would produce on the value of such provincial property.*
- (2) *Every Crown agency, in respect of provincial property owned or occupied by it, may pay in each year to the municipality in which the property is situate the amount which the rate levied for general municipal purposes on the assessment for real property that is used as a basis for computing business assessment in that municipality would produce on the value of such provincial property.*
- (3) *Where the Crown in right of Ontario or any Crown agency occupies or uses land for the purpose of, or in connection with any business, the Minister or the Crown agency, as the case may be, may pay to the municipality in which the land is situate the amount that the current rates for general municipal purposes on business assessment would produce in respect of the carrying on of such business on the land.*
- (4) *For the purposes of subsection (3), the legislative, executive and administrative activities of the Government of Ontario shall not be deemed to be the carrying on of a business.*

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APPENDIX 1

Municipal Tax Assistance Act,
R.S.O. 1980, c.311

PAYMENT AND
ASSESSMENT
PROVISIONS

(10) *Notwithstanding any other provision of this Act, the minimum amount payable under subsections (1) and (2) to a municipality in respect of agricultural research stations, provincial parks, historical parks and wilderness areas situate in the municipality shall be an amount equal to the amount the municipality was entitled to receive in 1983 under subsection 160(7) of the Municipal Act and section 4 of the Provincial Parks Municipal Tax Assistance Act as those provision read on the 31st day of December, 1983.*

(11) *For the purposes of any general or special Act, the equalized assessment of a municipality that receives a payment under subsection (10) shall be deemed for apportionment purposes, other than for school purposes or for county purposes or for apportionment between merged areas, to be increased by an amount that would have produced the amount of the payment received by the taxation of real property at the rate determined by dividing the total taxes levied for all purposes other than school purposes on commercial and industrial assessment in the preceding year by the total equalized commercial and industrial assessment for the preceding year, multiplied by 1,000.*

(12) *In determining the taxes levied on commercial and industrial assessment under subsection (11), there shall be excluded taxes on such assessment under section 33 of the Assessment Act.*

No cases or comments.



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APPENDIX 1

SUBJECT

Ontario Municipal Board Act,
R.S.O. 1980, c.347

Ontario Municipal Board Act

Numerous sections of this Act relate to the assessment appeal system. Note particularly the following sections:

ASSESSMENT APPEALS DIVISION

- s.5a. (1) *There is hereby established a division of the Board to be known as the Assessment Appeals Division.*
- (2) *Every member of the Board is a member of the Assessment Appeals Division.*
- (3) *The Lieutenant Governor in Council may appoint persons to the Board to sit exclusively on appeals heard by the Assessment Appeals Division under subsection (4).*
- (4) *The Assessment Appeals Division shall hear and determine all appeals to the Board under,*
- (a) *section 47 of the Assessment Act;*
 - (b) *sections 407, 496 and 497 of the Municipal Act;*
 - (c) *section 52 of the Local Improvement Act; and*
 - (d) *subsections 7(1) and (2) of the Assessment Appeals Procedure Statute Law Amendment Act, 1982.*

NOTICE REQUIREMENTS

- s.76. (1) *Any notice required to be given to a company, municipality, corporation, co-partnership, firm or individual, shall be deemed to be sufficiently given by delivering the notice, or a copy thereof, within the time, if any, limited therefor,*
- (a) *in the case of a railway company, to the president, vice-president, managing director, secretary or superintendent of the company, to some adult person in the employ of the company at the head or any principal office of the company;*

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SUBJECT

Ontario Municipal Board Act,
R.S.O. 1980, c.347

- (b) *in the case of a municipality, to the head of the municipality, or to the clerk;*
- (c) *in the case of any other company or corporation, to the president, vice-president, manager or secretary, or to some adult person in its employ at its head office;*
- (d) *in the case of a firm or co-partnership, to any member thereof, or, at the last known place of abode of any such member, to any adult member of his household, or at the office or place of business of the firm to a clerk employed therein; and*
- (e) *in the case of an individual, to him, or, at his last known place of abode, to any adult member of his household, or at his office or place of business, to a clerk in his employ.*

s.83. *Unless otherwise provided, ten days notice of any application to the Board, or of any hearing by the Board, is sufficient, but the Board may in any case direct longer or permit shorter notice of the application.*

APPEAL
ON QUESTION
OF LAW TO
DIVISIONAL
COURT

REV

s.95. (1) *Subject to the provisions of Part IV, an appeal lies from the Board to the Divisional Court, with leave of the Divisional Court, on a question of law.*

No cases or comments.



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Ministry
of
Revenue

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APPENDIX 1

SUBJECT
Power Corporation Act,
R.S.O. 1980, c.384

Power Corporation Act

EXEMPT
FROM
TAXATION

s.46. (1) *Notwithstanding the Assessment Act or any other general or special Act the Corporation and its property is not subject to taxation for municipal or school purposes, except for local improvements.*

PAYMENTS
IN LIEU OF
TAXATION

(2) *The Corporation shall pay in each year to any municipality in which are situated lands owned by and vested in the Corporation or buildings used exclusively for executive and administrative purposes and owned by and vested in the Corporation or buildings owned by and vested in the Corporation and rented by the Corporation to other persons the total amount that all rates, except, subject to subsections (4) and (5), rates on business assessment, levied in that municipality for taxation purposes based on the assessed value of the land at the actual value thereof according to the average value of land in the locality and the assessed value of such buildings would produce.*

(3) *In addition to the amounts payable under subsection (2), the Corporation shall pay in each year to any municipality in which are situated generating station buildings or transformer station buildings owned by and vested in the Corporation the total amount that all rates except, subject to subsections (4) and (5), rates on business assessment, levied in that municipality for taxation purposes would produce based on an assessed value of such buildings to be determined on the basis of \$86.11 for each square metre of inside ground floor area of the actual buildings housing the generating, transforming and auxiliary equipment and machinery multiplied by the equalization factor used in the year 1978 by the Ministry of Revenue.*

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APPENDIX 1

Power Corporation Act,
R.S.O. 1980, c.384

(4) The Corporation shall also pay the amount that the current rates for business assessment levied on assessment on,

- (a) lands owned by and vested in the Corporation;*
- (b) buildings used exclusively for executive and administrative purposes and owned by and vested in the Corporation; and*
- (c) generating station buildings and transformer station buildings owned by and vested in the Corporation,*

would produce, based on 60 per cent of the assessed value of such land and buildings as calculated and determined under subsections (2) and (3).

(5) The Corporation shall also pay the amount that the current rates on business assessment would produce on land and buildings owned or occupied by the Corporation for carrying on the business of selling by retail electrical goods, supplies or appliances.

LIMITATION
OF PAYMENTS

(6) Notwithstanding subsections (2), (3), (4) and (5), the total amount payable thereunder by the Corporation to any municipality in any year shall not exceed 50 per cent of the total of the amounts required for the purposes of the municipality and of all of its local boards being raised by the imposition, rating and levying of all rates, assessments and taxation, except local improvement rates, upon rateable property in the municipality in that year.

DISTRIBUTION
OF PAYMENTS

(7) Subject to subsections (8) and (9), the payments received under subsections (2), (3), (4) and (5) shall be credited by the municipal corporation to its general fund.



APPENDIX 1

Power Corporation Act,
R.S.O. 1980, c.384

(8) *The portion of the payments received under subsections (2), (3), (4) and (5) that is attributable to levies for county purposes shall be paid by the municipal corporation to the county that would have been entitled thereto if the land had been assessed and taxed in the usual way.*

(9) *The portion of the payments received under subsection (2) in respect of dwelling houses, including farm properties, rented by the Corporation to other persons that is attributable to levies for elementary or secondary school purposes, shall be paid by the municipal corporation to the school boards that would have been entitled thereto if the land had been assessed and taxed in the usual way, and for the purposes of this subsection the tenants of such dwelling houses and farm properties shall be deemed to be rated as tenants on the assessment roll of the municipality.*

(10) *The valuations made under this section shall be used for the purpose of computing county rates, school rates and legislative grants in all respects as though the properties valued were not exempt from taxation for such purposes.*

(11) *Where a school board is entitled to a payment under subsection (8) with respect to the property in which a pupil resides with his parent or guardian, any child whose parent or guardian is the tenant of the property shall be deemed to be a resident pupil under the jurisdiction of such school board.*

VALUATION
BASIS

(12) *The assessments and assessed values referred to in this section are valuations made in each year for the purposes of this section by the Ministry of Revenue, and subject to subsections (2), (3), (4) and (18) the valuations shall be made on the same basis as real property liable for municipal taxation in the municipality.*

(13) *The decision of the Treasurer of Ontario as to whether this section applies to any property of the Corporation is final.*

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APPENDIX 1

Power Corporation Act,
R.S.O. 1980, c.384

NOTICE OF
VALUATION

- (14) *The Ministry of Revenue shall, on completion of the valuation of the Corporation's property in a municipality, deliver or mail to the clerk of the municipality and to the Corporation a notice setting out the valuations referred to in subsection (12).*

APPEAL
PROVISIONS

- (15) *The municipality or the Corporation may appeal to the Ontario Municipal Board against the valuation and a notice of appeal to the Board under this subsection shall be sent by the party appealing, by registered mail, to the secretary of the Board within twenty-one days after the notice of the valuation has been delivered or mailed under subsection (14).*
- (16) *Upon receipt of a notice of appeal under this section, the secretary of the Ontario Municipal Board shall arrange a time and place for hearing the appeal and shall send notice thereof to all parties concerned in the appeal at least fourteen days before the hearing.*
- (17) *The Ontario Municipal Board upon appeal shall determine the amount at which the property in question shall be valued and its decision is final and binding and there is no appeal therefrom.*

EXEMPTION
FROM
VALUATION

- (18) *In making the valuations referred to in subsection (12), there shall be no value included for machinery whether fixed or not nor for the foundation on which it rests, works, structures other than buildings referred to in subsection (2), (3) or (5), substructures, superstructures, rails, ties, poles, towers, lines nor any of the things excepted from exemption from taxation by paragraph 17 of section 3 of the Assessment Act, nor for other property, works or improvements not referred to in subsection (2), (3) or (5), nor for an easement or the right or use of occupation or other interest in land not owned by the Corporation.*

No cases or comments.



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APPENDIX 1

SUBJECT

Provincial Land Tax Act,
R.S.O. 1980, c.399

Provincial Land Tax Act

LAND
ASSESSMENT

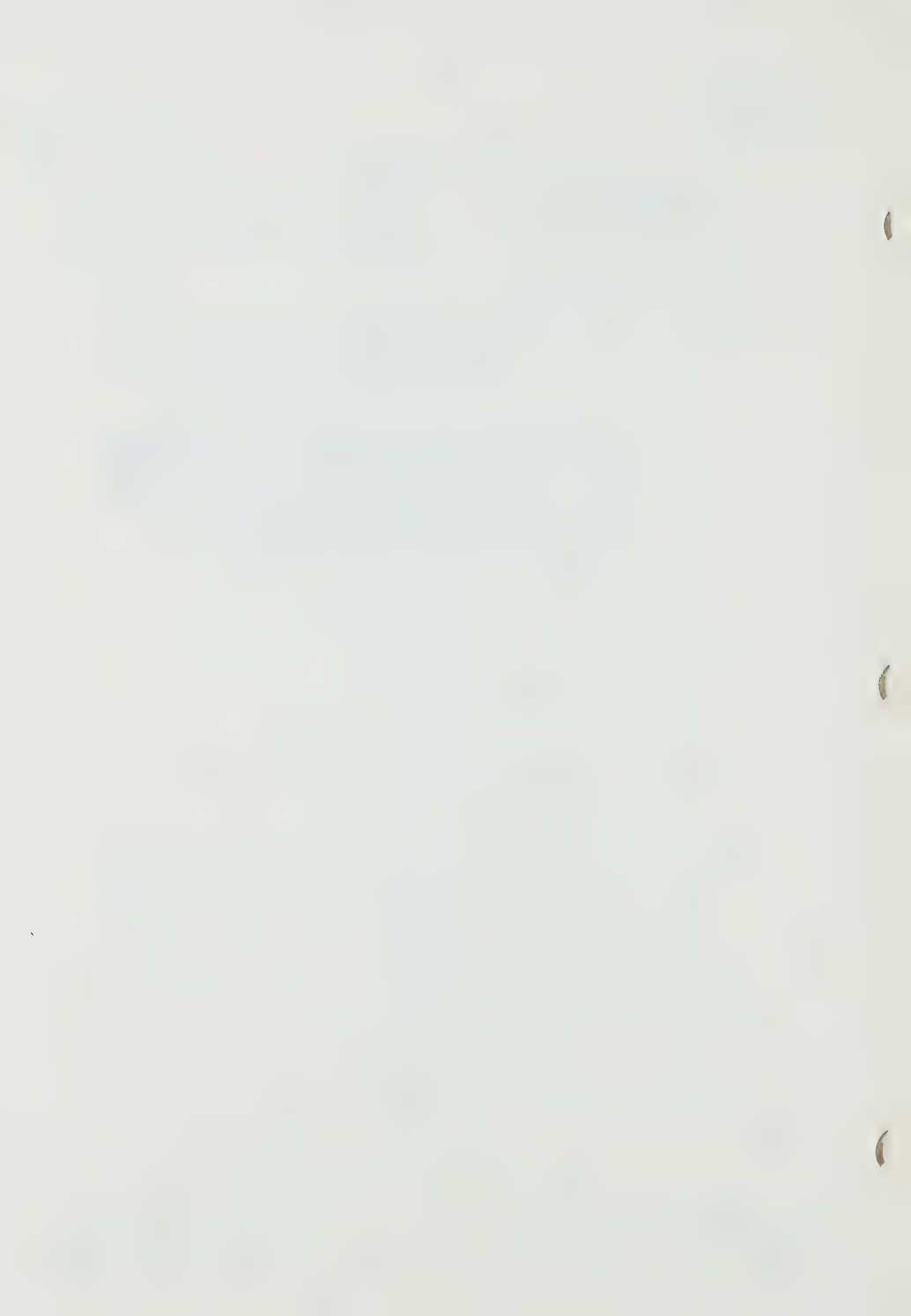
s.3. (1) *All land situate in territory without
municipal organization is liable to
assessment and taxation under this Act, subject
to the following exemptions from taxation:*

The Provincial Land Tax Act provides for the assessment and taxation of land in areas without municipal organization. Many of its provisions are similar to the provisions of the Assessment Act. Interested persons should consult the full text of the Provincial Land Tax Act itself. The real property assessment required under the Provincial Land Tax Act is administered by Ministry of Revenue property assessors.

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APPENDIX 1

SUBJECT

Regional Municipality of Peel
Act, R.S.O. 1980, c.440

Regional Municipality of Peel Act

APPLICATION OF *s.125. (1)* For the purposes of paragraph 9 of section 3
ASSESSMENT ACT and section 26 of the Assessment Act, the
Regional Corporation shall be deemed to be a
municipality.

REGIONAL
CORPORATION
DEEMED NOT TO
BE TENANT

(2) For the purposes of paragraph 9 of section 3
of the Assessment Act, where property belonging
to the Regional Corporation is occupied by an
area municipality or where property belonging
to an area municipality is occupied by the
Regional Corporation or another area
municipality, the occupant shall not be
considered to be a tenant or lessee, whether
rent is paid for such occupation or not.

(3) In subsection (2) "Regional Corporation" and
"area municipality" include a local board
thereof.



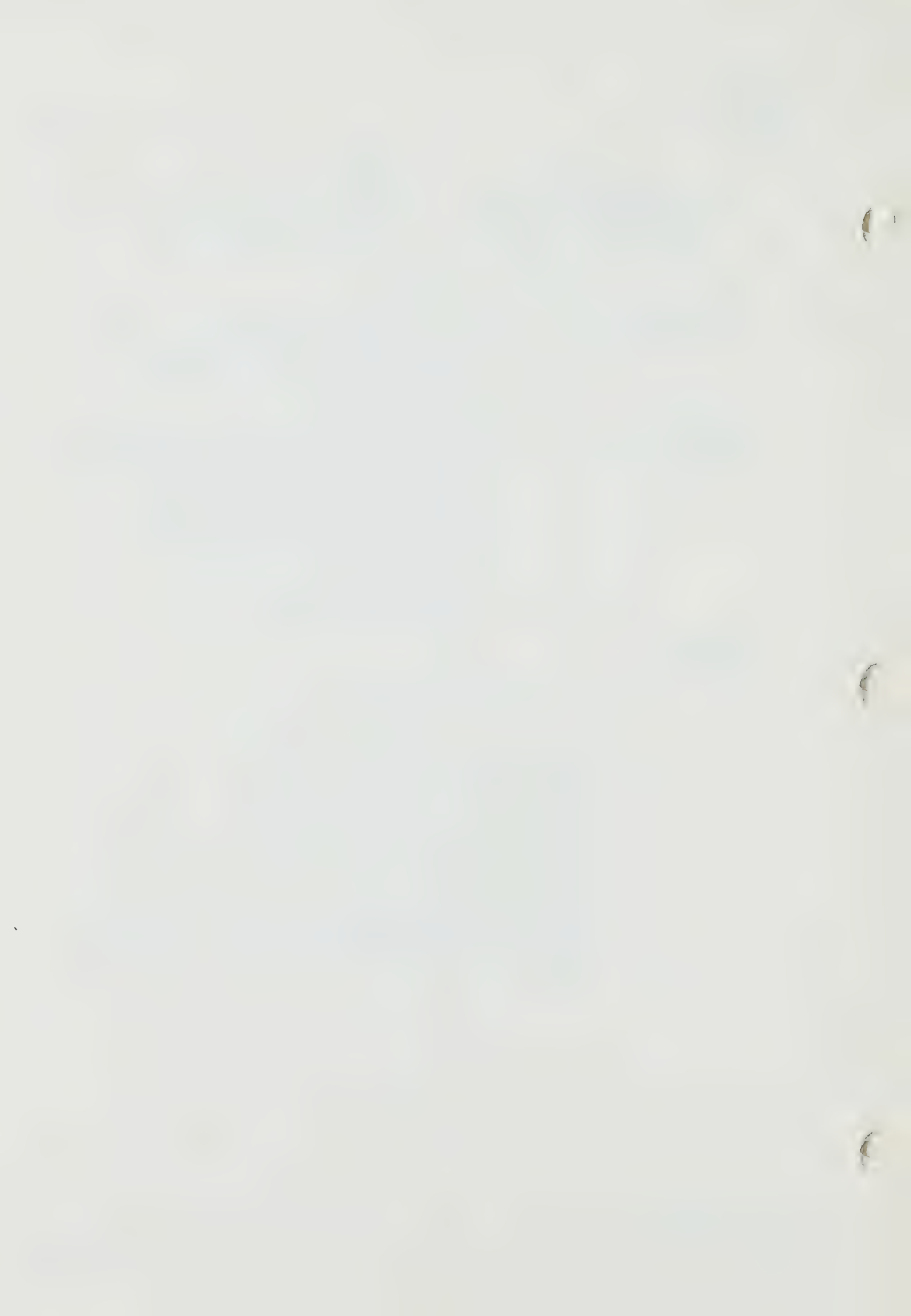
A section similar to the above is also included in
the following Acts:

Regional Municipality of Durham Act	Section 137
Regional Municipality of Haldimand- Norfolk Act	Section 120
Regional Municipality of Halton Act	Section 130
Regional Municipality of Hamilton- Wentworth Act	Section 142
Regional Municipality of Niagara Act	Section 169
Regional Municipality of Ottawa- Carleton Act	Section 172
Regional Municipality of Sudbury Act	Section 112
Regional Municipality of Waterloo Act	Section 161
Regional Municipality of York Act	Section 161
Municipality of Metropolitan Toronto Act	Section 257

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APPENDIX 1

SUBJECT

Statutory Powers Procedure Act,
R.S.O. 1980, c.484

Statutory Powers Procedure Act

Both the Assessment Review Board and the Ontario Municipal Board are tribunals governed by the Statutory Powers Procedure Act. This Act sets out numerous requirements that bear directly on the appeal process outlined in the Assessment Act, but many of these requirements are met by provisions within the Assessment Act itself. Only some of the more important sections of the Statutory Powers Procedure Act will be quoted in this portion of the Guide. The provisions that are met by the Assessment Act will not be considered here.

PARTY
ABSENT
FROM
HEARING

s.7.

Where notice of a hearing has been given to a party to any proceedings in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in his absence and he is not entitled to any further notice in the proceedings.

HEARINGS
TO BE
PUBLIC

s.9.

(1) A hearing shall be open to the public except where the tribunal is of the opinion that,

- (a) matters involving public security may be disclosed; or*
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,*

in which case the tribunal may hold the hearing concerning any such matters in camera.

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APPENDIX 1

ORDER
MAINTAINED
AT HEARING

(2) *A tribunal may make such orders or give such directions at a hearing as it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any such order or direction, the tribunal or a member thereof may call for the assistance of any peace officer to enforce the order or direction, and every peace officer so called upon shall take such action as is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.*

RIGHTS OF
PARTIES AT
HEARINGS

- s. 70. *A party to proceedings may at a hearing,*
- (a) *be represented by counsel or an agent;*
 - (b) *call and examine witnesses and present his arguments and submissions;*
 - (c) *conduct cross-examinations of witnesses at a hearing reasonably required for a full and fair disclosure of the facts in relation to which they have given evidence.*

EVIDENCE

- s. 15. (1) *Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,*
- (a) *any oral testimony; and*
 - (b) *any document or other thing,*
- relevant to the subject matter of the proceedings and may act on such evidence, but the tribunal may exclude anything unduly repetitious.*



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Statutory Powers Procedure Act,
R.S.O. 1980, c.484

- (2) *Nothing is admissible in evidence at a hearing,*
- (a) *that would be inadmissible in a court by reason of any privilege under the law of evidence; or*
- (b) *that is inadmissible by the statute under which the proceedings arise or any other statute.*
- (3) *Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceedings.*
- (4) *Where a tribunal is satisfied as to their authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.*
- (5) *Where a document has been filed in evidence at a hearing, the tribunal may, or the person producing it or entitled to it may with the leave of the tribunal, cause the document to be photocopied and the tribunal may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing it or the person entitled to it a photocopy of the document filed certified by a member of the tribunal.*
- (6) *A document purporting to be a copy of a document filed in evidence at a hearing, certified to be a true copy thereof by a member of the tribunal, is admissible in evidence in proceedings in which the document is admissible as evidence of the document.*

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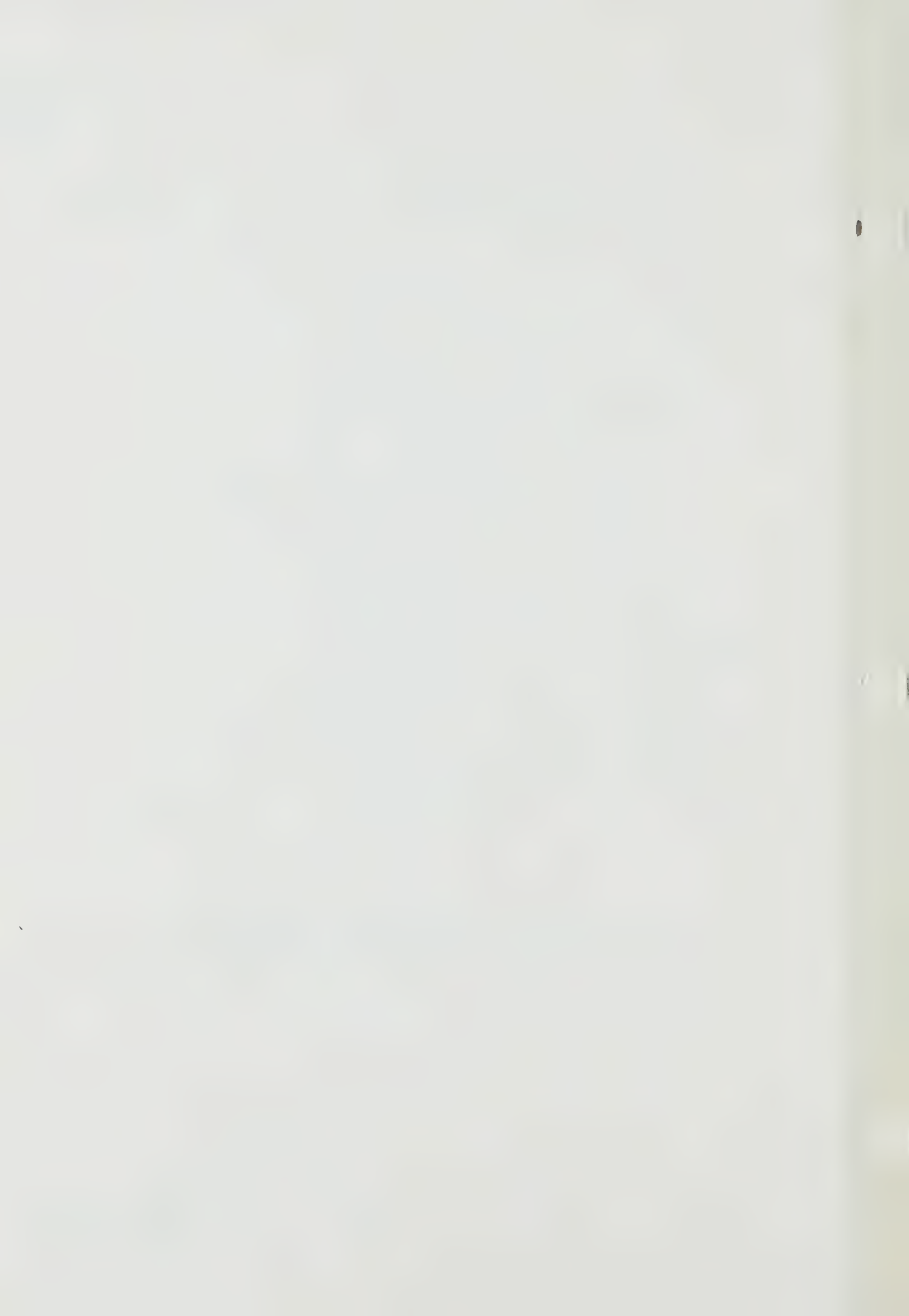


APPENDIX 1

DECISION
OF
TRIBUNAL

- s.16. A tribunal may, in making its decision in any proceedings,*
- (a) take notice of facts that may be judicially noticed; and*
 - (b) take notice of any generally recognized scientific or technical facts, information, or opinions within its scientific or specialized knowledge.*
- s.17. A tribunal shall give its final decision and order, if any, in any proceedings in writing and shall give reasons in writing therefor if requested by a party.*
- s.18. A tribunal shall send by first class mail addressed to the parties to any proceedings who took part in the hearing, at their addresses last known to the tribunal, a copy of its final decision and order, if any, in the proceedings, together with the reasons therefor, where reasons have been given, and each party shall be deemed to have received a copy of the decision or order on the fifth day after the day of mailing unless the party did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the copy of the decision or order until a later date.*

With respect to Sections 17 and 18, see the "Notice of Decision" section in the commentary on Section 39 of the Assessment Act.





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GLOSSARIES

SUBJECT

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APPENDIX 2

SUBJECT

Legal Interpretation for
Non-Lawyers

INTRODUCTION This appendix is intended to serve as an aid to understanding the Assessment Act and related material in this Guide. It will be divided into two sections: "Statutory Interpretation" and "Case Law".

STATUTORY INTERPRE- TATION

Statutes are often hard to understand. They are written in language that appears stilted and constructed with sentences that seem inordinately long. But the purpose of statute law is not to entertain the reader, rather it is to state in as precise and as unambiguous terms as possible the intention of the Legislature.

Some portions of the Assessment Act can be very confusing at first glance. The best and simplest initial response to this problem is to read slowly and carefully (and perhaps two or three times) through the section in which you are interested. Careful reading will untangle a surprising amount of legal phrasing and make the section, clause or paragraph clear.

Specific words or differences between words can be important. If, for example, a section states that something "may" be done, that section is considered discretionary, but if it is stated that something "shall" be done, then the section is considered mandatory.

Judges will sometimes resort to dictionaries to assist them in their search for the plain meaning of statutory words and phrases. The common, everyday use of words is the use most favoured unless the words are defined elsewhere in the statute.

Reading a section in the context of the Assessment Act as a whole sometimes helps in interpreting a passage. The definitions given in s. 1, for example, can be vital to the interpretation of the later sections of the Act.

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A judge who finds that the meaning of a statutory phrase is not clear will try to interpret the passage by examining it in the light of what the statute in question is presumed to be intended to do. Section 18 of the Assessment Act provides for special treatment for farm lands, for example. A judge might examine this section and decide that the provisions relating to farm lands are intended to provide some incentive to encourage taxpayers to keep their lands in agricultural production. The judge's interpretation of what the phrase "farm lands" means in s. 18 would then be coloured by this interpretation of the intent of the section.

Sections exempting persons from taxation are strictly interpreted against exemption in order that no citizen should be able to throw an unfair burden onto the other taxpayers by avoiding his or her duty to pay tax. The courts will not, for example, grant an exemption under s. 3 of the Assessment Act unless the property to be exempted falls squarely within the provisions of that section.

Two rules of interpretation are worth noting at this point, not because they have much actual influence on court decisions, but because they can appear in the wording of a judge's reasoning and leave the reader confused if he or she is unfamiliar with them. The ejusdem generis rule expresses the idea that general words or phrases should be read in the context of any specific words that precede them. Thus, if the ejusdem generis rule is applied to the phrase "other similar institution" in s. 3 para. 11 of the Assessment Act, then that phrase will be taken to refer only to institutions similar in type, purpose and organization to those types of institutions listed just before the phrase - industrial farm, house of industry, etc. Noscitur a sociis is another Latin phrase that applies an ejusdem generis sort of reasoning to specific words. The meaning of a word is to be taken from its context. Thus, if this maxim is followed, a list of vehicles comprising "buses, trucks, motorcycles and cars" would not be taken to include railway cars because the general tone of the phrase points to vehicles that travel on the open road.



APPENDIX 2

Legal Interpretation for
Non-Lawyers

CASE LAW

When all is said and done, the most important source of opinion with respect to the meaning of a given passage in the Assessment Act is the reasoning of the courts. For that reason statutory interpretations must be considered in the light of relevant case law.

One of the basic principles of our legal system is the doctrine of stare decisis - the rule that authoritative precedents must be followed. If a court of law has made a decision with respect to the meaning or application of a given word or passage in the Assessment Act, then that decision is binding and must be followed by the lower courts in similar situations.

From the standpoint of the layman dealing with the Assessment Act, the reasons for the decisions given with respect to the Act can be very useful in that they present interpretations that are legally binding. Once the Supreme Court of Canada has decided, for example, that a certain type of property is liable to assessment, then that property is liable, and there is no point in further discussion concerning the interpretation of the Assessment Act on that issue. Case summaries are included in this Guide not only because they clarify the meaning of sections of the Act, but also because they present the accepted legal position with respect to how the Act should be interpreted.

That being said, a note of caution should be interjected concerning the approach to case law. A given case can only be an authority for that which it actually decides. If the facts of another case do not fit into the same line of reasoning, then the results may well be different. The facts in assessment cases vary widely. It is worth noting that a decision which relates to, say, fully detached residential homes may not apply to row housing units. Whether or not a court decision applies to a given situation depends on whether or not the reasoning in that decision fits the facts of the case under consideration.

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It should also be noted that a court is actually bound only by the decisions of a higher court in the same jurisdiction. The Ontario High Court of Justice must therefore follow the precedents set by the Supreme Court of Canada, but need not accept the reasoning of the British Columbia Court of Appeal or the United States Supreme Court. The reasoning of any court may be accepted as being "persuasive", however, even if it is not actually binding. If a judge on the Ontario Court of Appeal makes a clear, useful comment concerning a body of law, then the Supreme Court of Canada can (and sometimes does) adopt it.

Note also that case law changes. Today's accepted legal position may be overruled tomorrow. It is very important that this Guide be kept up to date and that its users be familiar with recent developments as well as the old, standard cases.



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Legal Phrases for Non-Lawyers

<u>alter ego</u>	- One's other self, a puppet.
<u>bona fide</u>	- Genuine, in good faith.
<u>ejusdem generis</u>	- Of the same kind or nature. (See the "Statutory Interpretation" section in Appendix 2.)
<u>ex parte hearing</u>	- A hearing in which one of the parties involved is absent.
<u>inter alia</u>	- Among other things.
<u>intra vires</u>	- Within the power of, within legal authority. (See <u>ultra vires</u> .)
<u>mutatis mutandis</u>	- Making appropriate substitutions.
<u>noscitur a sociis</u>	- The meaning of a word can be gathered from its context. (See the "Statutory Interpretation" section in Appendix 2.)
<u>onus of proof</u>	- The responsibility of producing evidence that will satisfy a court that something is true or false. Generally, the onus in an appeal is on the party appealing; that is, if the appellant produces no convincing evidence, the appeal will be dismissed. The onus or burden of proof is said to shift from one party to another in an appeal when the party with the onus of proof presents enough evidence to the court to raise the presumption that that party's case is correct. In an assessment appeal, an "intermediate" onus is sometimes said to rest on the assessor to show that an assessment is equitable, if that assessment is not at market value. Because an appeal to the Ontario Municipal Board is an appeal by <u>trial de novo</u> (see <u>trial de novo</u>), the onus of proof remains with the ratepayer even where the Regional Assessment Commissioner is the appellant.

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Legal Phrases for Non-Lawyers

prima facie

- At first sight, on first impression. A prima facie case is one in which enough evidence exists to raise an initial presumption that one party is correct. The onus of proof then shifts to the other party. (See "onus of proof".)

res judicata

- A thing or matter settled by judgement. Once a matter has been litigated and decided, it cannot be raised again by the same parties.

sine die

- "Without day", indefinitely. A trial or appeal adjourned sine die is adjourned without a date set for further hearing.

stare decisis

- The principle of law that states that authoritative precedents must be followed. (See the "Case Law" section in Appendix 2.)

trial de novo

- A new trial in which evidence and argument must be presented from the beginning.

ultra vires

- Beyond the power of, outside legal authority. (See intra vires.)

vive voce

- In speech, not writing.



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